

In the Matter of Robin Kuchad, 1 ROP Intrm. 547EE (1988)

**IN THE MATTER OF
ROBIN KUCHAD,
An Alleged Delinquent Child.**

**REPUBLIC OF PALAU,
Appellant,**

v.

**ROBIN KUCHAD,
Appellee.**

JUVENILE APPEAL NO. 1-84
Juvenile Case Nos. 14-85, 15-85

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: October 10, 1988

Counsel for Appellant: Eric S. Basse, AAG

Counsel for Appellee: Kevin N. Kirk

BEFORE: ARTHUR NGIRAKLSONG, Associate Justice; ROBERT A. HEFNER, Associate Justice; FREDERICK J. O'BRIEN, Associate Justice Pro Tem.

O'BRIEN, Associate Justice Pro Tem:

On May 9, 1985, Appellee was charged with Burglary and Grand Larceny in Juvenile Case No. 14-85, *In the Matter of Robin Kuchad and John Q. Demei, Alleged Delinquent Children.*

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On June 26, 1985, Appellee was charged with Trespass in Juvenile Case No. 15-85, *In the Matter of Robin Kuchad, An Alleged Delinquent Child.*

On June 7, 1985, the Prosecution moved, pursuant to 34 PNC § 6102(b), to have Appellee prosecuted as an adult in Juvenile Case No. 14-85, on the grounds that since he was born on November 18, 1967, and was then nearly eighteen years old, his age justified it. That motion was denied by the Trial Court on July 25, 1985.

On August 13, 1985, the Trial Court sua sponte dismissed both juvenile cases against Appellee for lack of jurisdiction, having found that Appellee's birthday was actually July 17, 1967, which would have made him over 18 years of age by the time of trial.

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On August 30, 1985, the Prosecution filed Criminal Case No. 291-85, *Republic of Palau v. John Q. Demei and Robin Kuchad*. This case involved the same Burglary and Grand Larceny charges which had been the subject of Juvenile Case No. 14-85. Appellee moved to dismiss the case on the grounds that the offenses were alleged to have been committed at a time when he was under 18 years of age. This motion was granted on November 21, 1985, the Trial Court finding that, absent evidence that Appellee's physical and mental maturity justified treating him as an adult, pursuant to 34 PNC § 6102(b), it lacked **1547GG** jurisdiction to try Appellee as an adult.

Appellant urges us to determine that Appellee can be prosecuted as an adult or, in the alternative, that he can be prosecuted as a juvenile, but that to allow Appellee to "slip through the cracks" and avoid prosecution altogether would be a result not intended by the legislature. Appellee concurs that the legislature never intended such an anomalous result, but he contends that the legislature intended that a person in his situation should be prosecuted as a juvenile.

We agree with Appellee, and hold that when a person commits a crime prior to his eighteenth birthday but reaches age eighteen prior to trial, he shall be prosecuted as a juvenile through the filing of an information of delinquency; however, the Prosecution may thereafter move to have him prosecuted as an adult, pursuant to 34 PNC § 6102(b), on the grounds that his physical and mental maturity justifies it. If the trial court grants such a motion, the person shall thereafter be prosecuted as an adult.

In reaching this decision, we note initially that there is no such thing in the Republic of Palau as a "juvenile court". Chapter 61 of Title 34 of the Palau National Code (PNC) provides the mechanisms for the Court to deal with cases involving "delinquent children." The Code defines a "delinquent child" according to four categories: (a) law violators, (b) children who are beyond the control of their **1547HH** parents, guardians, teachers, and custodians, (c) truants and runaways, and (d) children who present a threat to the health or morals of themselves or others. 34 PNC § 6101.

The Chapter then requires the courts to adopt "flexible procedures" in dealing with juveniles, based upon "the accepted practice of juvenile courts of the United States." 34 PNC § 6102(a). There follows a provision which allows for a juvenile who is 16 years of age or older to "be treated in all respects as an adult if in the opinion of the court his physical and mental maturity so justifies." 34 PNC § 6102(b).

The next section, 34 PNC § 6103, defines persons who can be classified as delinquent children as being those under 18 years of age, and provides that a juvenile delinquency adjudication shall not be considered as a criminal conviction. It goes on to say that "proceedings against a person under 18 years of age as a delinquent child" are to be conducted according to the provisions of Chapter 34.

The rationale for treating juvenile offenders differently from adult offenders is that juveniles are considered to lack the same capacity to appreciate the consequences of their actions that society demands of adult offenders. Thus, minors are not considered to be as blameworthy

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as adults for violating the law. That explains why juveniles are to be treated differently, but it also explains [1547II](#) why the “age at time of offense” standard is the most widely accepted among United States jurisdictions. 89 A.L.R.2d 506, *Juvenile Court - Jurisdiction - Age*.

We believe that the “age at the time of offense” standard is the most just and practical criterion to use in deciding this issue. A person’s age at the time he commits an offense is a fixed standard because his birth date is generally easy to determine with certainty and the date of the offense is usually not open to question. However, the date of arrest, the date when legal proceedings are instituted, and the date when trial commences, are all subject to chance events and potential manipulation.

Chapter 61 of Title 34, Palau National Code, was derived from Chapter 1 of Title 15, Trust Territory Code (TTC). The TTC provisions are essentially kept intact in the PNC. A case from Palau which was decided by the Trust Territory High Court is very similar to the case at bar and its rationale coincides with our decision here. *Marbou v. Termeteet*, 5 TTR 655 (App. Div. 1971), involved a person who was sixteen years old at the time of his arrest and preliminary hearing, but who was charged in a criminal information. The youth challenged the Government’s power to proceed against him as an adult. The Court ruled in his favor, saying:

Where a person may be subject to the risk of criminal prosecution or conviction, yet where the legislating authorities have attempted to obviate such risk, as in the [1547JJ](#) case of juvenile offenders, procedures which favor non-criminal standards are to be preferred all cases involving a person who has not yet attained his eighteenth birthday must be initially prosecuted under an information of delinquency The government may elect to move for transfer to criminal proceedings, or the Court may initiate such a motion; upon showing of sufficient maturity, and a finding of such maturity by the Court, a criminal information may be substituted for the information of delinquency and the regular criminal processes shall become operative. *Id.* at 663 (citation omitted).

That *Marbou* is factually different from the case before us is not significant, because it is premised on the rationale that the age of the juvenile at that time of the offense should control any decision about how to treat him. We agree with that rationale.

We also note that it is difficult to determine what is “the accepted practice of juvenile courts of the United States”, 34 PNC § 6102(a), because each of the 50 states and the District of Columbia has its own statute, as does the federal court system. Thus, juvenile court practice in the United States is based on 52 different statutes. These laws speak in terms of jurisdiction rather than the PNC’s “procedures” and “proceedings”. The American statutes focus on whether a juvenile court has jurisdiction over a youth, based upon his age either (a) at the time of the offense, (b) at the time of arrest or arraignment, or (c) at the time of trial. Since the most common state statutory method of conferring juvenile jurisdiction focuses on the youth’s age at [1547KK](#) the time of the offense, 89 A.L.R.2d 506, *supra*, and since the federal juvenile statute, 18 U.S.C. § 5031, et seq. (which is applied in the federal courts in all 50 states) has the same focus, we conclude that the age at time of the offense standard which we have adopted is “the

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accepted practice of the juvenile courts of the United States.”

The Federal Juvenile Delinquency Act, 18 U.S.C. § 5031 et seq., defines juvenile delinquency as:

. . . the violation of law . . . committed by a person prior to his 18th birthday which would have been a crime if committed by an adult. 18 U.S.C. § 5031.

It has been held that a person who was under 18 years of age when he committed a crime, but over 18 when he was indicted, was a juvenile under the Federal Juvenile Delinquency Act. *United States v. Fotto*, 103 F. Supp. 430 (D.C. N.Y. 1952). See also, *United States v. Jones*, 141, F. Supp. 641 (D.C. Va. 1976); 47 Am. Jur. 2d, Juvenile Courts, Etc., Section 27, page 1007; and 89 A.L.R.2d 506, Sections 5-6.

Our holding today eliminates the possibility that a youthful offender will escape justice simply because he commits a crime before he reaches 18 years of age but is not prosecuted until after his 18th birthday. It clarifies the law in the Republic regarding the manner in which cases involving juveniles are to be processed.

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The decision of the Trial Court in Criminal Case No. 291-85, granting the motion to dismiss, is affirmed.

The decision of the Trial Court in Juvenile Case Nos. 14-85 and 15-85, dismissing those cases, is reversed. Those cases are remanded to the Trial Court for further proceedings consistent with this opinion.