

Ngiraked & Kerradel v. ROP, 3 ROP Intrm. 324 (1993)
**PATRICK RAMARII, JOHN O. NGIRAKED,
EMERITA KERRADEL,
Appellants,**

v.

**REPUBLIC OF PALAU,
Appellee.**

CRIMINAL APPEAL NO. 3-93
Criminal Case No. 114-92

Supreme Court, Appellate Division
Republic of Palau

Decision and order re motions for release/stay pending appeal
Decided: October 5, 1993

Attorney for Defendant/Appellant John O. Ngiraked: Kevin N. Kirk

Attorney for Defendant/Appellant Emerita Kerradel: Oldiais Ngiraikelau

Attorney for Plaintiff/Appellee: Nicolas Mansfield, Assistant Attorney General

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; and LARRY W. MILLER, Associate Justice.

PER CURIAM:

Appellants John O. Ngiraked and Emerita Kerradel have each moved this Court, pursuant to ROP App. Pro. 9(b), for a stay of execution of sentence and release pending appeal. The motions of the two appellants raise similar issues and will be treated together by this Court.

1325 Appellants were convicted of first degree murder for their respective roles in the assassination of President Remeliik and are currently serving life sentences. Appellants' requests for the same relief in the Trial Division were denied in a memorandum opinion by the judge who tried the case and rendered the judgment.

The motion for stay and release before this Court is denied for the following reasons.

Rule 9(b) of ROP App. Pro. requires the trial court to state in writing the reasons for refusing release pending appeal. The appropriate procedure for the trial court to follow is set out in ROP Crim. Pro. 46. Section (c) of Rule 46 states:

Pending Sentence and Notice of Appeal. A person who has been convicted of an offense and is either awaiting sentence or has filed an appeal shall be treated in

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accordance with the provisions of Rule 46(a)(1) through (6) above, unless the court has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained.

Section (c) thus refers back to section (a) of Rule 46, addressing release prior to trial, and Rule 46 (a)(2) sets forth factors for the court to consider: the nature of the offense, the weight of the evidence, family ties, etc..

The trial court in the instant case stated in its decision that given the nature of the offense (murder) and the sentences imposed (life terms), there were no conditions of release which could reasonably assure that the defendants would not flee, would not be a danger to others, and would not be in danger themselves. **¶326** The decision went on to state that the court had considered the elements listed in ROP Crim. Pro. 46(a)(2).

The trial court clearly satisfied the above statutory requirements by issuing a written decision setting forth reasons for denying release that corresponded to the reasons set out in Rule 46(c). In an abundance of caution, the court also considered the additional factors set forth in Rule 46(a). The above-quoted subsection (c) makes very clear, however, that such consideration is unnecessary if the court has reason to believe that there is a risk of flight or danger to the community.

The thrust of Appellants' argument is that the court stated its reasons too summarily, not identifying the elements it had considered in concluding that there was a risk of flight or danger to the community, and that the court's reasons lack foundation. It is clear from the transcript of the hearing, however, that the court based its conclusions on the serious nature of the crime (murder), the life terms imposed, and the inherent untrustworthiness that appellants demonstrated when they permitted three innocent people to be convicted of the crime in the first assassination trial. The trial court's finding that no conditions of release could adequately ensure against the risk of flight or danger to the community is entitled to great deference. *See Omelau v. Republic of Palau*, Crim. App. No. 2-93 (May 1993).

Appellants' motion for a stay of execution of sentence and release pending appeal is denied.