

Ngemaes v. ROP, 4 ROP Intrm. 250 (1994)
CLARENCE NGEMAES,
Appellant,

v.

REPUBLIC OF PALAU,
Appellee.

CIVIL APPEAL NO. 3-94
Civil Action No. 179-92

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: August 11, 1994

Counsel for Appellant: Scott P. Ciment, Office of the Public Defender

Counsel for Appellee: Nicholas Mansfield, Office of the Attorney General

BEFORE: LARRY W. MILLER, Associate Justice; PETER T. HOFFMAN, Associate Justice;
EDWARD C. KING, Part-time Associate Justice

MILLER, Justice:

Clarence Ngemaes pleaded guilty to the crime of unlawful possession of a firearm, a family shotgun that he was using to hunt fruit bats. The Firearms Control Act, which Ngemaes admits violating, states that a violator “shall be . . . imprisoned for not less than 15 years.” 17 PNC § 3306(a). Ngemaes requested the trial court to suspend some or all of his 15 year sentence, relying on the general authority to suspend contained in 17 PNC §§ 3109 and 3110. The trial court stated that it would suspend the sentence if it were permitted to do so. However, the trial court denied the request for suspension, concluding that section 3306(a) requires actual imprisonment for 15 years, and prohibits suspension of any **L251** part of that mandatory sentence. Ngemaes appeals from that decision. We affirm.

The question presented on appeal is how to resolve the conflict between the directive contained in section 3306(a) that a defendant found guilty of unlawful possession of a firearm receive a sentence of 15 years’ imprisonment and the general power of the court contained in sections 3109 and 3110 to suspend criminal sentences. ¹ In resolving this conflict, we are faced with a question of legislative intent. We discern that intent by looking to the language of the firearms statute and the circumstances of its enactment.

¹ Section 3109 permits suspension of the execution of a sentence imposed “upon a person convicted of a criminal offense.” Section 3110 permits suspension of the imposition of a sentence for “any offense not punishable by life imprisonment.”

The Palau Constitution directs the Olbiil Era Kelulau to establish “a mandatory minimum imprisonment of fifteen (15) years for violation of any law regarding importation, possession, use or manufacture of firearms.” Palau Const. Art. XIII, § 13(2). Responding to this constitutional mandate, see 17 PNC § 3302(c), the First Olbiil Era Kelulau (OEK) enacted the Firearms Control Act, which provides that any person who knowingly imports, possesses, uses, manufactures or has in his custody or control any firearm “shall . . . be imprisoned for not less than 15 years.” 17 PNC § 3306(a).

The words used in section 3306(a), directing that a defendant found guilty of violating the Firearms Control Act shall **1252** be “imprisoned for not less than 15 years” evinces an intent that he or she must serve at least 15 years in prison. With the exception of murder in the first and second degree, see 17 PNC §§ 1701-02, every other criminal law enacted by the OEK provides for a term of imprisonment of not more than a stated term. See, e.g., 17 PNC § 2701 (providing that a person convicted of robbery “shall be imprisoned for not more than 10 years.”). Where the OEK has only stated a maximum term of imprisonment, and the sentencing court is free to impose any sentence up to that limit which it deems appropriate, there is no inconsistency in applying the suspension statutes to suspend all or part of the sentence imposed. In directing that persons be imprisoned for not less than a given term of years, by contrast, there is a clear implication that the sentencing court is prohibited from suspending any portion of the minimum term. By choosing in the case of the Firearms Control Act to declare that violators shall be “imprisoned for not less than 15 years,” we understand the OEK to have intended just such a prohibition.

This reading of the statute is confirmed by looking to the circumstances in which the Firearms Control Act was enacted. As noted above, the firearms clause of the Palau Constitution directed the OEK to enact a firearms control law and to establish a “mandatory minimum imprisonment” of 15 years for violating it. We believe it plain that the framers of the Constitution intended by this language that the mandated punishment not be subject to suspension. Thus, our holding that the OEK intended this same **1253** result is in conformity with the principle that statutes be interpreted whenever possible to avoid inconsistency with the Constitution.

But we need not rely solely on any rule of construction to conclude that the OEK intended that the Firearms Control Act should conform to and carry out the clear mandate of the Constitution. In the “Declaration of policy and legislative findings” section of the Act, the OEK explicitly stated that the penalties for violating the laws controlling firearms have been “constitutionally mandated.” 17 PNC § 3302(c). This confirms that in passing the Firearms Control Act the OEK meant to implement the directive found in the firearms clause of the Palau Constitution, and to establish a mandatory minimum term of imprisonment of 15 years.

In light of this conclusion, Ngemaes’ reliance on the general language of the suspension statutes, 17 PNC §§ 3109 and 3110, must be rejected. Relying on a provision stating that a court may suspend the imposition of any sentence except for those offenses punishable by life imprisonment, see 17 PNC § 3110(a), Ngemaes argues that the trial court erred in concluding

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that his 15 year sentence could not be suspended. The Republic replies that this provision does not apply to violations of the Firearms Control Act because a statute mandating a sentence of not less than 15 years “implicitly” allows for a sentence of life imprisonment.

We need not here determine whether a life sentence would be permissible under the Firearms Control Act for, regardless of [L254](#) the resolution of that issue, the specific sentencing mandate of the Act must take precedence over the general provisions of the suspension statutes.² Thus, even if it were the case, as Ngemaes suggests, that the “punishable by life imprisonment” provision applies only to those offenses where such a sentence is explicitly stated, and that therefore a sentence under the Firearms Control Act could theoretically be suspended, the specific and unambiguous language of the Act itself, establishing a non-suspendable minimum term of imprisonment, would override the general provisions of the suspension statute.³

Ngemaes also argues that, pursuant to RPPL 3-73, a convict serving a 15 year term of imprisonment for violating 17 PNC § 3306(a) may be paroled. Whether the Parole Board may parole a convict before the conclusion of his 15 year term of imprisonment is a separate question from whether a sentencing court may suspend a portion of the 15 year term of imprisonment. The former question is not before us at this time and therefore we will not address it.

Finally, Ngemaes argues that the Firearms Control Act, as construed to prohibit suspension of the minimum term of [L255](#) imprisonment, is unconstitutionally vague. The vagueness doctrine traditionally relates to whether a criminal statute adequately informs potential offenders of the proscribed conduct. While vague sentencing provisions may pose constitutional questions if they do not state with sufficient clarity the consequences of violating a criminal statute, the provision at issue here unambiguously specifies the penalty to be imposed upon conviction, namely a minimum term of imprisonment of 15 years.

* * *

It is in the nature of mandatory sentences that their imposition may be harsh as applied to particular defendants who would otherwise be deserving of sympathy and mitigation in meting out an appropriate punishment. The record reveals that Ngemaes is a 38 year old father of four who has worked in the Palau Head Start Program since 1982, and who has never before been convicted of a crime. The probation report says that his general reputation in the community is good.

But it was the judgment of the framers of the Constitution, ratified by the people, and put

² We have previously reserved judgment on the question whether a sentence of more than 15 years would be constitutionally permissible. *Kazuo v. Republic of Palau*, Criminal Appeal No. 6-89, slip op. at 3 n.1 (October 28, 1993); *Republic of Palau v. Ngiraboi*, 2 ROP Intrm. 257, 265 (1991). We continue to do so here.

³ Ngemaes relies heavily on a contrary conclusion reached by the United States Supreme Court in *Rodriguez v. United States*, 480 U.S. 522, 107 S.Ct. 1391 (1987). It suffices to say that while the Supreme Court based its conclusion, as do we, on legislative intent, it did so with respect to a differently-worded statute and in a very different historical context.

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into effect by the OEK, that establishment of a severe, across-the-board and irreducible penalty would best serve the “vital interest of the people of Palau in controlling firearms” and in eliminating the evils associated with them. See 17 PNC § 3302(c).

¶256 The trial court’s judgment is AFFIRMED.