In re Munguy, 6 ROP Intrm. 22 (1996)

IN THE MATTER OF THE APPLICATION OF JAMES ANET MUNGUY, aka MOSES NOPNGAR, FOR A WRIT OF HABEAS CORPUS

CIVIL APPEAL NO. 32-96
Civil Action No. 160-96

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: November 15, 1996

Counsel for Appellee: Carin C. Duryee

Counsel for Appellant: Marvin Hamilton

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; ALEX R. MUNSON, Associate Justice

MICHELSEN, Justice:

This appeal concerns extradition procedures. Extradition between the Republic of Palau and the United States of America is ⊥23 governed by the "Agreement on Extradition, Mutual Assistance in Law Enforcement Matters and Penal Sanctions Concluded Pursuant to Section 175 of the Compact of Free Association." (Hereinafter "Agreement" or "the Treaty".) It is this Agreement that provides the law by which persons wanted for prosecution or to complete sentences of incarceration are to be transported between the two nations. The United States Government requested, and the Republic of Palau agreed to, the extradition of James Anet Munguy, aka Moses Nopngar ("Appellant"). [1] He brought an action for a writ of habeas corpus, claiming that he was being wrongfully detained and should not be extradited to Guam. The trial court denied the requested relief. We affirm the trial court's decision.

A warrant for Munguy's arrest was issued by the Superior Court of Guam on October 20, 1994, based on an indictment charging murder, arson, and related crimes. There were actually two indictments issued against Munguy. The initial indictment of October 13, 1994, charged him with attempted aggravated murder, aggravated assault, and aggravated arson. Shortly thereafter, one of the victims of the fire died from the resulting injuries, and on October 20, 1994, the Grand Jury issued a superseding indictment that contained the additional charge of aggravated murder.

Appellant was detained in Palau on April 3, 1996, upon suspicion that he was Munguy and therefore a fugitive from Guam. On April 9, 1996, the Republic of Palau filed a complaint

[1] In these proceedings Appellant has referred to himself as Moses Nopngar. The requested fugitive is named James Anet Munguy. The trial court found that both names refer to the Appellant.

for provisional arrest pending formal extradition proceedings. Attached to the complaint for provisional arrest was a diplomatic note from the United States Embassy in Koror, a copy of the superseding indictment, and the warrant for the arrest of the Appellant. The United States filed a formal request for extradition on May 20, 1996. A hearing on the matter was held on June 5, 1996, and the court certified the Appellant's extradition on a number of charges, including aggravated murder, and denied extradition on others.

Appellant has filed three petitions for habeas corpus in this case. His third petition asserted that for numerous reasons, the court wrongfully certified Appellant's extradition. Justice Beattie denied the third petition on October 3, 1996, and a notice of appeal was filed on October 4, 1996. The propriety of the trial ⊥24 court's ruling on the third habeas corpus petition is now before this Court.

This Court will address each of the issues on appeal keeping in mind that the trial court's findings of fact shall not be set aside unless clearly erroneous. ROP R. Civ. Pro. 52(a). The Court will also "disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." ROP R. Civ. Pro. 61.

In addition, generally accepted principles of international law provide that:

> "An international agreement is to be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in light of its object and purpose." Restatement (Third) of the Foreign Relations Law of the United States, § 325. *See* comment a.

This language closely parallels the rules of construction for the Palau National Code [1 PNC § 201] and consequently we will adopt that approach here.

The first argument concerns the wording of the Treaty. Appellant urges that Guam, as an unincorporated territory of the United States, is not to be considered part of the United States for purposes of this extradition Agreement. We cannot agree.

Title Two, Article I, of the Agreement states in pertinent part:

> "The Government of the United States shall extradite to Palau and the Government of Palau shall extradite to the United States . . . any person found in their respective jurisdictions against whom the requesting Government is proceeding for an offense or who is wanted by that Government for the enforcement of a sentence."

Title One, Article I, Section 2(a) provides the definitions to be used in interpreting the agreement, to wit:

> ". . . the government of the United States shall include the Governments of the states of the United States of America, its territories and possessions . . .

(emphasis added)."

⊥25 A reading of these two provisions clearly shows that the Territory of Guam is part of the United States for purposes of the extradition Treaty and that Appellant's argument must fail.

Even if a search for the meaning of the term "the United States" was expanded beyond the language of the Treaty, the result would be the same. What is considered "the United States" was settled at an early point. Chief Justice John Marshall, third Chief Justice of the United States, declared that the United States "is the name given to our great republic, which is composed of states and territories. The District of Columbia, or the territory west of the Missouri, is not less within the United States, than Maryland or Pennsylvania . . ." *Loughborough v. Blake*, 18 U.S. 317, 5 Wheat. 317, 5 L.Ed. 98 (1820). That general definition has not changed. In certain statutory contexts, a "State" of the United States may very well be limited to meaning one of the fifty states [2] but when "the United States" enters into an international treaty it does so as a geographical whole that includes both its states and territories.

Appellant also argues that due to the "hostile and racist climate" towards citizens of the Federated States of Micronesia [3] prevalent in Guam, he cannot be guaranteed a fair trial there. This assertion fails for two reasons. First, it is not obvious that it is within this Court's discretion to consider such a claim when determining whether to allow a fugitive to be extradited. Title Two, Article III, Section 1 of the Agreement lists the circumstances under which extradition "shall not be granted." Section 2 of that Article lists the circumstances under which extradition "may be refused." In Article XV, both nations reserve the right to choose not to extradite their own citizens. These sections, therefore, enumerate the only exceptions to extradition; the first set mandatory, the other two discretionary. Conspicuously absent from this Article is the Appellant's proposed ⊥26 "fair trial" exception.[4]

The courts of Guam, are, of course, fully capable of and mandated to protect Appellant's fair trial rights. The right of a person accused of a serious crime to a trial by an impartial jury is fundamental to American jurisprudence. U.S. Const. amend. VI. *Farr v. Pitchess*, 522 F.2d 464, 468 (9th Cir. 1975). It is the trial court in Guam, not this court, that is the first line of defense of the Appellant's right to a fair trial. If the defendant feels that this right is violated, he can exercise his right to appeal in Guam's courts and through, at a minimum, a habeas corpus petition in the federal system.

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[2] *See, e.g., U.S. v. Bordallo*, 857 F.2d 519 (9th Cir. 1988) (conviction under 18 U.S.C. § 666(b) is limited to defendants who are agents of a "state"); *U.S. v. Perez*, 776 F.2d 797 (9th Cir. 1985) (Rota is within the definition of "the United States" for purposes of the Drug Abuse Prevention and Control Act).

[3] The Appellant is Yapese, not Palauan.

[4] It may be that the parties to this agreement have, by international custom, reserved the right to refuse extradition on such grounds. *See, Restatement (Third) of the Foreign Relations Law of the United States*, § 475(g) and § 476(h). However, "[r]efusal to extradite in such circumstances may give rise to diplomatic representations and protests, and in some instances has led to retaliation measures." *Id.* at 562. Consequently, a decision not to extradite on such a basis is best left to the Executive Branch.

The fact is that Appellant has failed in both the Trial Division and this Court to base his assertions on any reliable documentary or factual evidence. He cites only statements in newspapers and opinions from friends for his contention that Guam residents harbor a hostile attitude toward the citizens of the Federated States of Micronesia. This is an insufficient showing that the courts of Guam would not provide him with a fair trial.

Appellant also raised the objection to the trial court's holding that the government had sufficiently demonstrated that he was the fugitive requested. As earlier noted the Appellant, while not denying he is Munguy, identifies himself as one Nopngar. The evidence used to support the identification of Nopngar as Munguy was provided by an affidavit of probable cause. In that affidavit, there were statements that Nopngar and Munguy had the same physical description, the same birth date, and that a policeman raised in Yap identified Nopngar as Munguy. A photograph was also provided. Appellant challenges this foundation by declaring that no one has ever come into Court and identified Nopngar as Munguy, or performed a fingerprint match. Therefore, he claims that identity has not been established. This Court holds that Munguy's identity has been sufficiently established. The evidence submitted as to identity constitutes a prima facie showing that Nopngar is Munguy. The Defendant has not taken any steps to prove otherwise, and in ⊥27 fact, has never denied that he is Munguy. Therefore, we uphold the trial court's ruling.

The Petitioner's final arguments relate to alleged deficiencies regarding technical compliance with the Agreement and 18 PNC § 1001 et seq., an extradition statute that is a carry over law from the Trust Territory Code. We address the issues concerning the Treaty first.

Title Two, Article VI, Section 2 of the Agreement provides that "The request [for extradition] shall be accompanied by . . . a statement of its [the requesting government's] laws relating to proceedings barred by lapse of time." In this case, a copy of the applicable statute was not provided by the United States (at least not directly), but was provided to the Court through the Palau Attorney General's Office. The issue is whether the method by which the Court was provided a copy of the applicable law is material. We hold it is not.

Appellant argues neither that the statute of limitations for 1994 homicides has expired in Guam, nor that the Court did not have before it the applicable law. Rather he argues that since a statement of the law did not accompany the request as contemplated by the Treaty, but only later was provided by the Palau Attorney General's Office, it was not properly and timely brought before the Court. The argument is one of form over substance. The Court had an obligation to confirm for itself that the charges were not time- barred, because such charges cannot form the basis of an extradition. Title Two, Article III, Section 1(b) of the Treaty. It did so as part of the hearing. The purpose of this provision of the Treaty having been met, the Court was not in error in allowing Palau, rather than the United States, to provide the applicable law.

This leaves us with the Petitioner's argument that even if the Treaty was substantially complied with, 18 PNC § 1001 et seq., was not.

In his brief, Appellant relies upon a provision in the Palau National Code that states that every demand for extradition of an indicted defendant must contain the indictment, and the indictment is to be "authenticated by the executive authority making the ⊥28 demand."[5] 18 PNC § 1003(b). Although we are not deciding that the authentication in this case was deficient, reliance on section 1003 is misplaced. The pertinent provisions of Title 18 were originally enacted by the Congress of Micronesia during Palau's period as part of the Trust Territory of the Pacific Islands. See Source Note, Palau National Code Annotated, 18 PNC § 1001. It was reenacted as part of the codification of Palau's laws in 1985. The extradition treaty at issue here was a much later ratified subsidiary agreement of The Compact of Free Association and it established the procedure by which fugitives would be surrendered between the two sovereign entities of the United States and the Republic of Palau. Title Two, Article I, states unambiguously that the signatory nations agree to extradite persons "subject to the provisions and conditions described in this Agreement." (Emphasis added). In accordance with the ordinary meaning of the terms used, and in light of the Treaty's object and purpose, we hold that it is the Treaty, and nothing more, that governs this particular extradition. Therefore, no objection is warranted based upon non-compliance with the pre-treaty extradition procedures of Title 18.

CONCLUSION

For the reasons set forth above, it is the opinion of the Appellate Court that the trial court's holding be and hereby is AFFIRMED.

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[5] The Appellant's objection is not that the Court did not have a copy of the indictment. It had both the initial indictment and the superseding indictment. The objection is that the authentication requirements of 18 PNC were not met.