

ROP v. Baga, 8 ROP Intrm. 340 (Tr. Div. 1999)
REPUBLIC OF PALAU,
Plaintiff

v.

EVER D. BAGA, RODRIGO BODA, LORETO TENEBRO,
ROGER SANCHEZ, EDGARDO OMANAN, PRUDENCIO SALINAS,
NESTOR ESTOQUIA, ALEJANDRO NIPANES, EDITO GUBALANI,
RODRIGO JEMINO, TAMEJON NUNEZ, JIMMY CAGAS,
HERMENIGILDO OMANAN, JEHO FUNA, DANILO PABLO,
NORBERTO MACAILING SR., ABRAHAM TUANI, ANGELITO BISNAR,
AVELITO ARBOL, RUFINO HISANZA, JEMELITO GOBALANE,
JUNIE PINEDA, and HSU WU KUAN,
Defendants

CRIMINAL CASE NO. 98-216

Supreme Court, Trial Division
Republic of Palau

Decided: October 12, 1999

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice.

On February 22, 1999, Defendant Ever Baga pled guilty to three counts of unlawful entry in violation of 13 PNC §§ 1002(a) and 1011. This Court thereafter sentenced Defendant to one year and six months imprisonment for these offenses. Baga has now filed a motion requesting that he be allowed to withdraw his guilty plea for these counts of unlawful entry, alleging that he is innocent of these offenses.

The decision of whether to allow a defendant to withdraw his plea is left to the sound discretion of the trial judge. *United States v. Groll*, 992 F.2d 755, 758 (7th Cir. 1993). A defendant may withdraw a plea of guilty after sentencing only to prevent manifest injustice. ROP R. Crim. Pro. 32(d). This is an extremely high standard, which the defendant in this case has not met.

Baga argues that it is manifestly unjust to sustain his conviction because he is factually innocent of the crime for which he pled guilty. Baga pled guilty to unlawful entry into the Republic of Palau under the immigration provisions in Title 13 of the Palau National Code. Defendant argues that Palau's borders extend to only within 24 nautical miles from the baselines from which the breadth of the territorial sea is measured and that he never came within 24 nautical miles of these baselines. This "24 nautical mile" limit does not appear within the Republic's statutes. Rather, Defendant argues that the United Nations Convention on the Law of the Sea ("Law of the Sea") that was ratified by the Republic, narrows all signatories' enforceable immigration borders to 24 nautical miles from the baselines. Therefore, Baga argues that he

cannot be guilty of unlawful entry since he was never alleged to be within 24 nautical miles of Palau.

The Law of the Sea, however, was ratified by the Republic well before Defendant pled guilty to this crime. Baga has articulated no reason why he chose to plead guilty rather than raise the terms of the treaty as his defense. Baga does not claim that his plea was not knowingly or voluntarily made, that he did not understand the charges brought against him, that the government made any misrepresentation during the plea bargaining process, or that he was otherwise misled into pleading guilty. Furthermore, Baga was represented by competent counsel when he chose to plead guilty. The fact that his attorney may not have recognized the availability of this defense is not a sufficient reason to allow a defendant to withdraw his plea. *McMann v. Richardson*, 90 S.Ct. 1441, 1450 (1970). 1341

In addition to ignoring the facts of this case, Baga has failed to produce any legal authority to support his position. Baga merely provides quotations from several cases without any argument as to their applicability to his situation. The holdings of these cases do not support his argument. In four of the six cases cited by Baga, the trial court refused to allow the defendant to withdraw his plea. Although the defendant was successful in withdrawing his plea in one case cited by Baga, the defendant in that case moved to withdraw his plea prior to sentencing where a much more lenient standard is involved.¹

More importantly, there is authority opposing Baga's motion. Although Baga alleges that "jailing the innocent is manifestly unjust," the case law is clear that claims of innocence alone do not mandate the withdrawal of a guilty plea. *United States v. Buckles*, 843 F.2d 469 (11th Cir. 1988), *cert. denied*, 109 S.Ct. 2450 (1989). Further, the fact that this Court has now held that the Law of the Sea narrows the enforceability of Palau's Immigration Statute to 24 nautical miles is of no avail. As the United States Supreme Court has observed,

[i]t is no denigration of the right to trial to hold that when the defendant waives his . . . remedies and admits his guilt, he does so under the law then existing; further, he assumes the risk of ordinary error in either his or his attorney's assessment of the law and facts. Although he might have pleaded differently had later decided cases then been the law, he is bound by his plea and conviction.

McMann v. Richardson, 90 S.Ct. 1441, 1450 (1970); *see also United States v. Ramos*, 923 F.2d 1346 (9th Cir. 1991) (holding that no manifest injustice resulted from refusal to allow defendant to withdraw his guilty plea notwithstanding intervening change in law). Finally, this Court finds that the prejudice to the Government and the waste of judicial resources that would result from granting Baga's motion to withdraw his plea weigh against granting this motion. *United States v. Wilson*, 81 F.3d 1300, 1306 (4th Cir. 1996); *United States v. Buckles*, 843 F.2d 469 (11th Cir. 1988).

¹ The final case cited by Defendant is completely irrelevant because it concerns whether the government can appeal from a trial judge's ruling on a defendant's motion to withdraw his plea.

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For these reasons, I find that Defendant has failed to show that denial of leave to withdraw his plea works manifest injustice. Defendant's motion is therefore DENIED.