

In re Gontina, 8 ROP Intrm. 102 (2000)
**IN THE MATTER OF THE APPLICATION
OF WILLIAM GONTINA, et al.,
FOR A WRIT OF HABEAS CORPUS.**

CIVIL APPEAL NO. 99-41
Civil Case No. 99-348

Supreme Court, Appellate Division
Republic of Palau

Argued: January 5, 2000
Decided: January 7, 2000

Counsel for Appellants: Marvin Hamilton

Counsel for Appellee: James T. Dixon, Jr., Assistant Attorney General

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice;
R. BARRIE MICHELSEN, Associate Justice.

BEATTIE, Justice:

Appellants appeal from the Trial Division's December 29, 1999 order denying their petition for a writ of habeas corpus. For the reasons that follow, we reverse that order and issue a writ of habeas corpus vacating the Trial Division's orders dated November 2, 1999 and December 23, 1999.

I. BACKGROUND

Appellants are captains of four fishing vessels arrested south of Tobi, in an area that Indonesia and the Republic of Palau each claim is within its "Exclusive Economic Zone." The vessels were licensed to fish in Indonesia but were not licensed to fish in Palau. Following their convictions for unlawful fishing and conspiracy to fish unlawfully, Appellants were sentenced to two years' imprisonment and fined a total of \$140,000. On October 28, 1999, this Court vacated their prison sentences because the statutes under which they were convicted authorized punishment only by fines and not by imprisonment.¹ *Gotina v. Republic of Palau*, 8 ROP Intrm. 56 (1999) (per curiam). Appellants were then released from prison after having been incarcerated for a total of 197 days, including pre-trial detention.

On November 2, 1999, the trial court issued an order prohibiting Appellants from leaving Palau without first paying the fines or posting bonds to secure the payment of the fines. The

¹ These statutorily authorized sentences are consistent with practices throughout the Pacific, which rely on fines and forfeitures rather than restraints of liberty to punish unlawful fishing offenses. See *South Pacific Forum Fisheries Agency Manual for Prosecutions of Foreign Fisheries Offences* (1994) at 40.

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following day, the court limited these restrictions to the period during the “pendency of their appeal” which was then before this Court. In an opinion issued November 10, 1999, this Court resolved the appeal, rejecting Appellants’ contention that the fines were unconstitutionally excessive. *Gotina v. Republic of Palau*, 8 ROP Intrm. 65 (1999) (per curiam). The Court noted the existence of the order restricting Appellants from leaving Palau, but did not address “the distinct issues that might arise from enforcement of” the fines “in the absence of a determination that appellants are capable of paying” them. *Id.* at 70.

Appellants subsequently filed an action seeking a declaratory judgment that, since their appeal was no longer pending, the ¶103 trial court’s order no longer confined them to Palau until they paid the fines or posted the bonds. In an order dated December 23, 1999, the trial court held that the travel restrictions were not limited to the pendency of the appeal, and admonished the government to “prevent [Appellants] from . . . leaving Palau without first paying” the fines. Appellants then withdrew the declaratory judgment action and filed the instant habeas corpus petition seeking relief from the November 2, 1999 and December 23, 1999 orders precluding them from leaving Palau without paying the fines or posting the bonds. The trial court denied the petition on December 29, 1999, and this appeal followed.

II. ANALYSIS

The Palau National Code permits any person who is “unlawfully . . . restrained of his liberty under any pretense whatsoever” to petition for a writ of habeas corpus. 18 P.N.C. § 1101. The government does not challenge Appellants’ assertion that the orders confining them to Palau pending payment of the fines or posting of the bonds are restraints of liberty that may be challenged under this statute. Moreover, the government concedes that these orders are the only thing preventing Appellants from leaving Palau without first paying the fines or posting the bonds.² Thus, we must determine whether there is any legal authority for these orders.

A trial court’s sentencing authority is defined by statute. “[I]t is for the legislature, not the courts, to prescribe the types and limits of punishments for particular crimes and the courts must defer to legislative policy judgments in that regard.” *Gotina v. Republic of Palau*, 8 ROP Intrm. at 60. As one court explained in vacating a sentence that was “not among the particular sanctions set forth in the statute,” “[t]he discretion of the judge in choosing among sentencing alternatives will be controlled by statute.” *Government of the Virgin Islands v. D.W.*, 3 F.3d 697, 698-99 (3d Cir. 1993) (quoting Wayne R. LaFare & Jerold H. Israel, *Criminal Procedure* 29 (1984)).

The Palau National Code defines the sanctions available for failure to pay a fine. It provides in relevant part that:

[i]n default of payment of the fine or any part thereof the court may order the defendant to be imprisoned for such period of time as it may direct . . . until the

² The trial court found that Appellants have not paid the fines because they have “no funds to pay them.” The government stated at oral argument that its investigation had not identified any funds or assets owned by Appellants.

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fine is paid in full or the imprisonment served which has been ordered in default of payment; provided, that . . . no defendant shall be imprisoned for a longer period of time than that fixed by law for such offense.

17 PNC § 3103. This statute does not authorize travel restrictions to enforce payment of fines, but rather authorizes imprisonment only to the extent that it would have been authorized as a sentence for the underlying offense itself.³

¶104 We have found no other statutes that address the consequences of failure to pay a fine, and are not aware of any statutory authority for preventing Appellants from leaving Palau unless they first pay their fines or post bonds to secure the payment.⁴ The government conceded at oral argument that it, too, is unaware of any such statutory authority. Thus, we conclude that the trial court's orders constitute an unlawful restraint on Appellants' liberty.

Accordingly, we REVERSE the trial court's order denying the petition for a writ of habeas corpus and we VACATE the trial court's orders of November 2, 1999 and December 23, 1999 which prohibit Appellants from leaving Palau without first paying their fines or posting a bond to secure payment of the fines.

³ A court that is authorized to impose an order of imprisonment is, of course, also statutorily authorized to impose lesser restraints on liberty in lieu of imprisonment. *See* 17 P.N.C. §§ 3107-10. Thus, in a case where imprisonment would have been an authorized sentence, a court could suspend the sentence or grant probation and impose travel restrictions as a condition of the suspension of sentence or the granting of probation. Here, however, where the trial court was without authority to impose a term of imprisonment, it was also without authority to impose these other restraints on liberty.

⁴ It is undisputed that Appellants' failure to pay is not willful but rather is due to indigency. Therefore we need not address the possible consequences of a willful failure to pay.