

Wolff v. Ngiraklsong, 9 ROP 20 (2001)
MARTIN WOLFF,
Petitioner,

v.

THE HONORABLE ARTHUR NGIRAKLSONG, CHIEF JUSTICE OF THE PALAU
SUPREME COURT,
Respondent.

SPECIAL PROCEEDING NO. 01-02
Criminal Case No. 99-253

Supreme Court, Appellate Division
Republic of Palau

Decided: October 26, 2001

[1] **Appeal and Error:** Mandamus, Writ of

When requesting mandamus relief, a petitioner has the burden of showing that the right to have the writ issued is clear and undisputable.

[2] **Constitutional Law:** Right to Counsel; **Criminal Law:** Right to Counsel

To require the trial court to appoint counsel free of charge, petitioner must present evidence demonstrating that he is unable to pay for counsel and prior representation of petitioner by Public Defender is not sufficient.

Counsel for Petitioner: Pro Se

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; KATHLEEN M. SALII, Associate Justice.

PER CURIAM:

[1] On October 10, 2001, Martin Wolff filed a petition for a writ of mandamus requiring the trial court to appoint counsel to represent him free of charge during the criminal case against him, *ROP v. Wolff*, Criminal Case No. 99-253. When requesting mandamus relief, a petitioner “has the burden of showing that the right to have the writ issued is clear and undisputable.” *BMC Corp. v. Ngiraklsong*, 3 ROP Intrm. 336, 338 (1993). Mr. Wolff has failed to meet that burden and therefore we deny the petition.

[2] The Palau Constitution mandates that a defendant be provided free counsel only when “the accused is unable to afford counsel.” ROP Const. art. IV, § 7. In his petition, Mr. Wolff has not shown that he submitted any evidence to the trial court demonstrating that he was unable to

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pay for counsel. Nor does the Public Defender's prior representation of Mr. Wolff establish his indigence; the Public Defender's Office has a longstanding practice of attempting to represent all criminal defendants who ask for counsel, regardless of need. And although Mr. Wolff did claim in his response to the Public Defender's motion to withdraw that he is indigent, the trial court was not obligated to accept his conclusory, unsworn, and self-serving allegations of poverty. Moreover, in his response to the Public Defender's motion to withdraw, it is unclear what position Mr. Wolff took other than to ask for a hearing on the motion. If Mr. Wolff believes that his indigence qualifies him to receive appointed counsel, he should make an appropriate motion supported by proper evidence in the trial court. At that point, of course, the trial court may simply re-appoint the Office of the Public Defender and direct that Mr. Wolff cooperate with his appointed counsel.

Accordingly, the petition for a writ of mandamus is DENIED.