In re Gotina, 9 ROP 1 (1999)

In the matter of the application of
WILLIAM GOTINA, et al.,
for a writ of habeas corpus.

CIVIL APPEAL NO. 99-23
Civil Action No. 99-219
Supreme Court, Appellate Division
Republic of Palau

Decided: August 19, 1999

[1] **Courts:** Jurisdiction of Article X Courts; **Habeas Corpus:** Jurisdiction

The laws of Palau do not contemplate a single justice of the Appellate Division ruling in the first instance on a writ of habeas corpus.

[2] **Courts:** Jurisdiction of Article X Courts; **Habeas Corpus:** Jurisdiction

The constitution makes no provision for the Appellate Division to exercise original jurisdiction over any matter.

Counsel for Petitioners: Marvin Hamilton

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

PER CURIAM:

On August 4, 1999, Petitioners were found guilty by the Trial Division, Chief Justice Ngiraklsong presiding, of two counts of unlawful fishing and one count of conspiracy to commit unlawful fishing. Criminal Case No. 99-100. Four of the Petitioners, the captains of each of the four boats involved, were fined between $20,000 and, $50,000 on the two unlawful fishing counts, and sentenced to two years imprisonment on the conspiracy count, such sentence to be suspended upon each Petitioner paying the assessed fine and leaving the Republic at his own expense; the remaining Petitioners were fined $400 on the unlawful fishing counts and sentenced to time served on the conspiracy count, again provided they paid their fines and departed at their own expense.

On August 5, 1999, Petitioners filed for a writ of habeas corpus before Chief Justice Ngiraklsong, arguing that the sentences of imprisonment were unlawful, and that their continued detention violates Art. IV, Secs. 6 and 10 of the Palau Constitution. Chief Justice Ngiraklsong denied the petition on August 9, 1999, finding the petition defective. On August 13, 1999, Petitioners filed an "Emergency Motion for Reconsideraion by a Qualified Justice of Summary Denial of Writ of Habeas Corpus by a Disqualified Justice." In the August 13 filing, Petitioners challenged Chief Justice Ngiraklsong's denial of the habeas petition on the grounds that the

Chief Justice was disqualified from hearing the petition, as he had imposed the allegedly illegal sentence in the first instance. On August 16, 1999, Chief Justice Ngiraklsong denied Petitioners' motion, finding no authority existed for the matter to be assigned to another judge of the Trial Division, and recommending Petitioners file their petition with the Appellate Division. The next day, Petitioners did so, moving "*a single Justice of the Appellate Division*" for a writ of habeas. (Emphasis in original.)

[1, 2] We do not believe that the laws of Palau contemplate a single justice of the Appellate Division ruling in the first instance on a writ of habeas corpus. The Constitution of the Republic of Palau confers appellate jurisdiction on the Appellate Division, Palau Const. art. X, § 6; it makes no provision for ⊥2 this Court to exercise original jurisdiction over any matter. A three judge panel is constitutionally mandated when this Court hears cases pursuant to its appellate jurisdiction. Palau Const. art. X, § 2. Moreover, ROP R. App. Pro. 22 provides that "[a]n application for a writ of habeas corpus shall be made to the appropriate trial court[; t]he proper remedy is by appeal to the Appellate Division from an order denying the writ." These provisions compel the conclusion that a petition for a writ of habeas should be heard in the first instance by a Justice in the Trial Division[1] and that the instant petition should be heard in the Appellate Division as an appeal by a three judge panel.

The language of 18 PNC § 1101, governing the power of judges to issue writs of habeas, does not alter this conclusion. That statute states that "[w]rits of habeas corpus may be granted by the Trial Division of the Supreme Court or any judge or justice authorized to be assigned by the Chief Justice in the Appellate Division of the Supreme Court." 18 PNC § 1101. The content of § 1101 is derived verbatim from the Trust Territory Code, 9 TTC § 101, with the words "Supreme Court" substituted for "High Court." We believe this language allowed the Chief Justice of the High Court of the Trust Territory to assign habeas petitions to judges besides those in the Trial Division of the High Court, if such judges were authorized to sit on panels of the Appellate Division of the High Court. *See, e.g.*, 5 TTC § 203 (temporary judges appointed by Secretary are qualified to sit in appellate division of High Court). However, there is no reason to believe that that statute meant that the appointed judge heard the petition on behalf of the Appellate Division. Therefore, we do not read 18 PNC § 1101 as permitting the instant petition to be heard by a single justice in the Appellate Division.

Therefore, this Court concludes that it may not assign a single justice to hear the petition in the first instance. Rather, pursuant to this Court's appellate jurisdiction, a three judge panel will consider the Petition as a notice of appeal from Chief Justice Ngiraklsong's denial of the writ.[2]

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[1]We need not address at this time whether the petition can or should be considered by a Justice who did not issue the challenged order.

[2]We do not deem the Petition to serve as a substitute for the notice of appeal of the conviction or sentence, however and we leave for briefing the question of whether the issues raised in the Petition should be raised in a direct appeal instead. In re Hsu, 6 TTR 27 (Tr. Div. 1972) (dismissing application for habeas writ in favor of "full orderly appellate consideration"). Should Petitioners seek to appeal their conviction, sentence, or both, they must do so within the time provided by ROP R. App. Pro. 4.

The matter will proceed on a regular appellate briefing schedule, unless expedited treatment is sought and granted.