

TRUST TERRITORY OF THE PACIFIC ISLANDS, Plaintiff

v.

TAKEO YAMASHIRO, Defendant

Criminal Case No. 195

Trial Division of the High Court

Palau District

August 20, 1968

Motion to modify a judgment. The Trial Division of the High Court, Robert Clifton, Temporary Judge, held that once a valid judgment and sentence had

been rendered in a criminal case the court had no jurisdiction after sentence had been executed to modify it.

Motion denied.

1. Criminal Law-Sentence--Modification

When a valid judgment and sentence has been rendered in a criminal case, the court has no jurisdiction after the sentence has been executed in whole or in part to set it aside and impose a new sentence or modify the sentence which has been imposed.

2. Criminal Law-Pardon and Parole

Under Section 435 of the Trust Territory Code any person convicted of a crime in the Trust Territory may be pardoned or paroled by the High Commissioner upon such terms and conditions as he shall deem best. (T.T.C., Sec. 435)

CLIFTON, *Temporary Judge*

The defendant filed a motion to modify a judgment imposing a life sentence on the defendant. The judgment was entered on February 11, 1960, by A. J. McCormick, Associate Justice of the High Court, and after a notice of appeal was filed and a hearing held on the appeal, said judgment was affirmed on February 18, 1963, by E. P. Furber, Chief Justice, and Joaquin C. Perez of the Appellate Division of the said High Court, 2 T.T.R. 638. The defendant has been serving his sentence after said judgment was entered.

At the hearing on said motion to modify the judgment, which was filed with the High Court in the Mariana Islands District and the hearing held at a regular sitting of the High Court in that District where the defendant is now serving his sentence, the District Attorney moved to dismiss said motion on the ground that the High Court at this time has no further jurisdiction to modify or change the said judgment, and said motion was duly heard and argued, the court stating that the matters relating to the merits of the motion to modify the judgment would not be heard or considered until the court had ruled on the

question of the jurisdiction of the court to modify the judgment.

[1] When a valid judgment and sentence has been rendered in a criminal case, the court has no jurisdiction after the sentence has been executed in whole or in part to set it aside and impose a new sentence or modify the sentence which has been imposed. In some jurisdictions it has been held that the court in such jurisdictions could set aside or modify the sentence or judgment during the term of court at which the sentence was imposed. Under the circumstances in this case, there is no point in considering whether at the same "sitting" or within a short time after the entry of a judgment by the High Court imposing a sentence in a criminal case, the High Court might change or modify the judgment or sentence.

There is no provision in the Trust Territory Code allowing any change or modification of the judgment or sentence, and this court clearly has lost jurisdiction in this case. See: 21 Am. Jur. 2d, 538, 539.

The court is not here called upon to pass on its right to correct clerical errors in entering a sentence or to correct an illegal sentence.

[2] Also, it should be noted that under Section 435 of the Trust Territory Code any person convicted of a crime in the Trust Territory may be pardoned or paroled by the High Commissioner upon such terms and conditions as he shall deem best. The court in this case is not commenting on which action the High Commissioner should take if an application should be made to him under said section.

ORDER

It is ordered that the High Court has no jurisdiction at this time to set aside or modify the judgment or sentence entered in the above entitled action and the defendant's motion to modify the judgment in this action is denied.