

TARZAN TINTERU, Appellant-defendant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS,
Appellee-plaintiff

Criminal Case No. 58
Trial Division of the High Court
Marshall Islands District

June 9, 1969

Appeal from sentence. The Trial Division of the High Court, Robert Clifton, Temporary Judge, held that evidence sustained verdict however sentence of banishment could only be rendered by the High Court and any such sentence by a .community Court or District Court was void.

1. Appeal and Error-Generally

Where evidence .supported the verdict, the verdict of the court should not be reversed on the ground of failure of evidence to support the verdict.

2. Criminal Law-Sentence--Banishment

Only the High Court has the power of banishment. (T.T.C., Sec. 170)

3. Criminal Law-Sentence--Banishment

The power of banishment, even though it may be for only a limited time, can be of very serious consequences and in the United States it is generally held that banishment of a person convicted of a crime is generally beyond the jurisdiction of state or local courts. (T.T.C., Sec. 170)

4. Criminal Law-Sentence--Modification

The suspension or reduction of a sentence on condition that the convicted person leave the state or county is void. (T.T.C., Sec. 170)

5. Criminal Law-Sentence--Banishment

It was not the intention of the -Code to permit banishment by the Community Courts or the District Courts either under Section 170 or Section 174 of the Code. (T.T.C., Sees. 170, 174)

CLIFTON, *Temporary Judge*

OPINION

In this matter counsel for the Trust Territory moved that the appeal be dismissed on the ground that the notice of appeal was not filed within thirty days after the entry of judgment, as required by Section 198 of the Trust Territory Code. The counsel for the defendant contended that the time to file the appeal did not run because the defendant was not informed of his right to appeal as required by Rule 14c(3), Rules of Criminal Procedure, which reads as follows:-

"Notice of the right of appeal. If the accused is not represented by counsel who is either a trained lawyer or a duly listed trial assistant, upon concluding the imposition of sentence, any court, including a Community Court, will inform the accused that he has the right of appeal, and if the accused so requests, the clerk shall prepare and file forthwith a notice of appeal in his behalf. Even though the accused has pleaded guilty, he may still appeal."

Counsel for the defendant answered this by stating that at the time of the sentence he was not a listed trial assistant and therefore that the said rule was not applicable.

He further stated that he had not informed the defendant of his right to appeal. The court thereupon heard arguments in relation to said appeal.

[1] The counsel for the defendant argued that the evidence showed that the defendant had acted in self-defense and therefore that the verdict should have been not guilty. However, the transcript of the testimony showed that the other witnesses at the trial had not testified as to the acts alleged to have justified defendant in using his knife in self-defense. This court must hold that the evidence supported the verdict, and the verdict of the court should not be reversed on the ground of failure of the evidence to support the verdict. (See *Fattun v. Trust Territory of the Pacific Islands*, 3 T.T.R. 571 and *Aiichi v. Trust Territory of the Pacific Islands*, 3 T.T.R. 290.)

Counsel for the defendant thereupon argued that the provisions of the judgment in relation to the defendant being required to stay outside of the Marshall Islands District for a two year period of a suspension of the sentence should be set aside.

The judgment of the court provided as follows:-

"It is ordered, adjudged, and decreed as follows:-

1. That Tarzan is to be placed in the Uliga jail for a period of 6 months, commencing this 8th day of January 1969 until July 8, 1969.

2. That after being imprisoned in the Uliga jail, he is to be sent back to Kusai and is not allowed to come back to the Marshall Islands District for a period of two (2) year Term of Suspension, starting from the date in which he starts leaving for said Kusai.

3. That, at the termination of Term of Suspension, at which time transportation will not be available, said Tarzan will proceed to be placed under the custody of the Marshall Islands District Sheriff, until the very first available transportation to Kusai.

4. That if Tarzan will fail to comply with number 2 as mentioned hereabove, will make him continue to finish his term of suspension in the Uliga jail instead of finishing it on Kusai."

It would appear that the sentence was suspended under the provisions of Section 174 of the Trust Territory Code, which reads as follows:-

"Suspension of sentence. The court which imposes a sentence upon a person convicted of a criminal offense may direct that the execution of the whole or any part of a sentence of imprisonment imposed by it shall be suspended on such terms as to good behavior and on such conditions as the court may think proper to impose. A subsequent conviction by a court for any offense shall have the effect of revoking the suspension of the execution of the previous sentence unless the court otherwise directs."

It would appear that the sentence was suspended under the above wording that a sentence should be suspended "on such conditions as the court may think proper to impose." It might well be argued that a requirement that a defendant remain outside of the district was a proper condition. However, the court's attention is called to Section 170 of the Trust Territory Code. Said provision reads as follows:-

"Orders as to residence. The *High Court* may, in lieu of or in addition to other lawful punishment, direct that a person found guilty of a criminal offense by it shall establish his place of residence within a specified area and maintain it there for a period of time not exceeding the maximum period of imprisonment which may be imposed for the offense." (Emphasis the court's.)

[2] It would seem that the law having been drafted so that only the High Court was mentioned as being given the power of banishment "*in lieu of* or in addition to other lawful punishment" that Section 170 and Section 174 would have to be interpreted as not giving any court other than the High Court the power of banishment. This result would follow under the application of the well-established maxim "*expressio unius est exclusio alterius*" (expression of the one is exclusion of the other).

[3-5] It may well be argued that the courts other than the High Court have the right to sentence the defendant

to jail for the full term allowed by law and that a condition of suspension which provides for banishment is an exercise of clemency and should be permitted. However, it is possible that a sentence which would be imposed and then suspended might be much greater than the actual offense justified and that the long sentence which was suspended with the condition of banishment was made long so as to allow the court to banish the defendant. The power of banishment, even though it may be for only a limited time, can be of very serious consequences. In the United States it is generally held that banishment of a person convicted of a crime is generally beyond the jurisdiction of state or local courts. Likewise, the suspension or reduction of a sentence on condition that the convicted person leave the state or county is void. (See: Criminal Law, Sec. 609, 21 Am. Jur. 2d 559, 560). It would appear from the provisions of Section 170 of the Code that it was not the intention of the Code to permit banishment by the Community Courts or the District Courts either under Section 170 or Section 174 of the Code.

In view of the foregoing, the court must hold that the condition of banishment in the above judgment is void and that any period of sentence longer than the six months imprisonment provided above is also void.

ORDER

It is ordered that the defendant at the conclusion of the six months sentence imposed by the judgment shall be released from jail and shall be no longer bound by the terms or conditions of the judgment.