

**ENNATO and ANIPENO, Plaintiffs**

**v.**

**KINTIN, Chief of Police of  
Tol Municipality, Defendant**

**Civil Action No. 565**

**Trial Division of the High Court**

**Truk District**

**July 8, 1970**

Hearing on complaint for criminal contempt of court for failure of accused to appear for trial before municipal court. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that if there was criminal contempt it was committed by counsel for accused for their failure to appear and that the court did not have jurisdiction to punish the accused under the circumstances surrounding their failure to appear.

**1. Civil Procedure—Generally**

When respondents were told by a messenger from the chief prosecutor not to go to court because he could not be there, they were justified in ignoring the trial setting even though they were technically obliged to appear at the time set.

**2. Contempt—Jurisdiction**

The jurisdiction of a court in contempt proceedings depends upon whether or not the acts of the contemnor, under the circumstances of the particular case, amount to contempt.

**3. Contempt—Criminal—Review**

A recitation of jurisdictional facts in the order adjudging accused guilty of contempt is necessary, the purpose of this being to enable the appellate court to determine, by an inspection of the record, whether a contempt has in fact been committed and whether the court had jurisdiction to punish it.

**4. Contempt—Criminal—Failure to Appear for Trial**

A contempt proceeding against a criminally accused person who fails to appear for trial is not considered by the courts because it is incidental only, if in fact it is contempt, to the trial of the charged criminal offense.

**5. Contempt—Criminal—Failure to Appear for Trial**

When an accused fails to appear for trial a warrant of arrest for contempt is not required, rather the court on the nonappearance of the defendant may issue a bench warrant for the arrest of the accused and remand him to jail, subject to right to bail, until trial of the criminal offense is completed.

**6. Contempt—Criminal—Generally**

A criminal defendant may be punished for conduct in contempt of court, such conduct being in court or otherwise, during the course of the trial by instituting new proceedings after the trial and verdict in accordance with any other criminal offense. (T.T.C., Sec. 415)

**7. Contempt—Criminal—Generally**

Bringing a complaint or information, arrest and trial for criminal contempt is subject to all of the rules applicable to trial of any other offense, commencing with the recitation in the charge of the specific acts, within the language of the statute, which are the subject of the complaint. (T.T.C., Sec. 415)

**8. Contempt—Criminal—Generally**

Upon the arrest on the charge of criminal contempt, the individual is subject to all of the protective provisions of the Code. (T.T.C., Sec. 415)

**9. Courts—High Court**

The jurisdiction of the High Court permits a trial de novo.

**10. Habeas Corpus—Generally**

The writ of habeas corpus is designed for the purpose of effecting speedy release of persons who are illegally deprived of their liberty.

**11. Habeas Corpus—Generally**

Habeas corpus is a writ of inquiry and is granted to test the right

*Assessor:*

F. SOUKICHI, *Presiding District Court Judge*

*Interpreter:*

SABASTIAN FRANK

*Reporter:*

SAM K. SASLAW

*Counsel for Petitioners:*

ISTARO RABAIRECK, *Public Defender's Representative*

*Counsel for Respondent:*

FUJITA PETER, *District Prosecutor*

TURNER, *Associate Justice*

Petitioners were accused in the Municipal Court for Tol Island, Truk District, in a three-count complaint with assault, affray, and drunk and disorderly conduct. They appeared with counsel for arraignment and requested trial be delayed until they could obtain the services of the Public Defender's representative from Moen Island. The

municipal court granted the request, released the accused and set trial for June 25, 1970.

The accused and their counsel failed to appear for trial and the court ordered the municipal prosecutor, who also was a police officer, to file a complaint for criminal contempt of court in accordance with Section 415, Trust Territory Code. A warrant for the arrest of the two was issued and executed, the petitioners being brought immediately before the court.

Although they were not represented by counsel nor were they asked if they were ready to proceed, the court did proceed. It read the charge that they "committed the crime of contempt of court by their wilful act" and asked for their pleas. Here there is a conflict in the testimony. The accused testified they pleaded not guilty while the "record of criminal trial" shows they pled guilty.

In any event, the court inquired as to their failure to appear and they explained that, first, Kintin, the chief of police and chief prosecutor for the municipality sent word by messenger to them that he was detained in Moen as a witness in a High Court trial, and, secondly, they heard the same information over the radio. It is perhaps significant neither the Public Defender's representative, who had been notified of the request for representation for the scheduled June 25, 1970, trial, and the local counsel, who appeared with them at the arraignment, were present at the time set for trial nor subsequently when the contempt proceedings were conducted.

[1] The court rejected the sufficiency of the excuse for nonappearance on the theory no one but the court was authorized to postpone a trial setting. Although this is technically true it assumes too great an understanding of court procedure by these young respondents. When they were told by a messenger from the chief prosecutor not to go to court because he could not be there, they were

justified in ignoring the trial setting even though they were technically obliged to appear at the time set.

[2, 3] The jurisdiction of a court in contempt proceedings depends upon whether or not the acts of the contemnor, under the circumstances of the particular case, amount to contempt. Here it cannot be said the conduct, under the circumstances, was contemptuous. More importantly, perhaps, than the facts ascertained at the hearing before this court on the petition for writ of habeas corpus is the necessity for a recitation of jurisdictional facts in the order adjudging the accused guilty of criminal contempt.

“ . . . the purpose of this requirement is to enable the appellate court to determine, by an inspection of the record, whether a contempt has in fact been committed and whether the court had jurisdiction to punish it.” 17 Am. Jur. 2d, Contempt, § 103.

The obligation to recite in the record the jurisdictional facts in a contempt proceeding is explained in *Chula v. Superior Court*, 368 P.2d 107, 97 A.L.R.2d 421 at 425. The A.L.R. annotation extensively reviews the failure of an attorney to appear in court at the time scheduled. An attorney's conduct is comparable but not the same as the conduct here involved. In none of the books available to the court is there found a single instance of a contempt proceeding against a criminally accused person who fails to appear for trial.

[4, 5] The court assumes such contempt is not considered by the courts because it is incidental only, if in fact it is contempt, to the trial of the charged criminal offense. A warrant for arrest for contempt is not required. The court on the nonappearance of a defendant, may issue a bench warrant for the arrest of the accused and remand him to jail (subject to right to bail) until trial of the criminal offense is completed.

In this case if there was criminal contempt, assuming the circumstances did not constitute a valid excuse for nonappearance, it was committed by counsel for their failure to appear. The court did not have jurisdiction to punish the accused under the circumstances surrounding their failure to appear.

[6-8] This does not mean a criminal defendant may not be punished for conduct in contempt of court, such conduct being in court or otherwise, during the course of the trial. After the trial of the criminal offense new proceedings may be brought under Section 415 of the Code with trial and verdict in accordance with any other criminal offense. Bringing a complaint or information, arrest and trial for criminal contempt is subject to all of the rules applicable to trial of any other offense, commencing with the recitation in the charge of the specific acts, within the language of the statute, which are the subject of the complaint. Upon the arrest on the charge, the individual is subject to all of the protective provisions of the Code, particularly including Sections 187 and 464, as amended.

[9-11] As indicated, the record in this case demonstrates the customary procedures of a criminal trial were not followed. However, since the jurisdiction of the High Court permits trial de novo the missing elements in the record were supplied by the hearing evidence. Because we are convinced from the evidence the two petitioners were improperly punished by confinement in the municipal jail for thirty days, their immediate release is warranted. This is the office of the writ of habeas corpus. The writ is designed for the purpose of effecting speedy release of persons who are illegally deprived of their liberty. It is a writ of inquiry and is granted to test the right under which a person is detained. 39 Am. Jur. 2d, Habeas Corpus, § 1 et seq.

Accordingly, petitioners are entitled to the relief available upon the writ, and it is

JUDGMENT

Ordered, adjudged, and decreed that Ennato and Anipeno be forthwith released from custody of the chief of police of Tol Island and that the order of commitment issued by the Municipal Court of Tol Island be set aside and vacated.