IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

SERIO MENGEOLT,
Appellant,
v.
REPUBLIC OF PALAU,
Appellee.

Cite as: 2017 Palau 17
Criminal Appeal No. 15-002
Appeal from Criminal Case No. 14-198

Decided: March 30, 2017

Counsel for Appellant ..... S. Remoket
D. Mizinov
Counsel for Appellee ..... G. Jibbensmith

BEFORE: JOHN K. RECHUCHER, Associate Justice
R. BARRIE MICHELSEN, Associate Justice
KATHERINE A. MARAMAN, Associate Justice[1]

Appeal from the Trial Division, the Honorable Arthur Ngiraklsong, Chief Justice, presiding.

OPINION

MICHELSEN, Justice:

[¶ 1] Appellant Serio Mengeolt pleaded guilty below to one count of murder in the second degree following the trial court's denial of his motion to dismiss the charges against him. As allowed by the plea agreement, he now appeals the trial court's denial of his motion to dismiss. For the reasons below, the trial court's decision is **AFFIRMED**.

BACKGROUND

[¶ 2] The institution of the case below marked the conclusion of a six-year investigation into the death of Teruko Kingya. During this time, the

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[1] Oral Argument was held on August 4, 2016. Members of this panel who were not present have listened to the recording of the hearing.

Republic interrogated Mengeolt on three separate occasions.[2] At the conclusion of each interrogation, Mengeolt was released without charge. On December 5, 2014—31 days after the last of the 3 interrogations—the Republic instituted the present case by filing an Information charging Mengeolt and two others with various crimes relating to the death.

[¶ 3] Mengeolt filed a motion under 18 PNC § 404(a)(1) to dismiss the charges contained in the Information, arguing that the Information was untimely filed in violation of 18 PNC § 403(b). Specifically, Mengeolt argued that the Republic's initial interrogations of him started § 403(b)'s 30-day time limit for filing charges, which the Republic failed to comply with. The trial court concluded that § 403(b)'s 30-day filing deadline is not triggered by arrests unaccompanied by criminal charges. Because Mengeolt was released without charge after each interrogation, the trial court concluded that § 403(b) is inapplicable and denied the motion. Mengeolt appeals this conclusion, arguing that the trial court misconstrued § 403(b).

STANDARD OF REVIEW

[¶ 4] The Trial Division's decision rested on its interpretation of 18 PNC § 403. A trial court's construction of a statute is subject to de novo review. *Roll 'Em Prods., Inc. v. Diaz Broad. Co.*, 21 ROP 96, 97 (2014).

DISCUSSION

[¶ 5] Article IV, Section 7 of the Palau Constitution provides that an accused has a right "to a speedy, public and impartial trial." Additionally Rule 48(b), ROP R. Crim. Pro., provides: "If there is unnecessary delay in filing an information or complaint against a defendant who has been held to answer to the court, or if there is unnecessary delay in bringing a defendant to trial, the court may dismiss the information or complaint." In addition to the more general constitutional right, and the Court's authority pursuant to Rule 48(b), the legislature has added additional strictures now codified at 18 PNC § 403(b). The section establishes a time requirement for institution of charges in certain cases. 18 PNC § 403(b) ("Any information or complaint

[2] The interrogations occurred on October 9, 2009; July 1, 2013; and November 4, 2014.

charging an individual with the commission of an offense shall be filed within thirty days from the date on which the individual was arrested or served with a summons in connection with such charges."); 18 PNC § 404(a)(1) ("If no complaint or information against an individual is filed until after the time limit required by section 403(b) … any such charge against that individual contained in such untimely complaint shall be dismissed or otherwise dropped."). Mengeolt argues that the 30-day time limit to file an information or complaint began to run when he was first detained and interrogated by the police in 2009.[3] The Republic counters that investigative interrogations unaccompanied by criminal charges do not trigger § 403(b)'s filing deadline.

A. Section 403(b), closely modeled after a United States statute, presumptively carries with it the construction given by United States courts.

[¶ 6] Section 403(b) was enacted in 2002 as part of RPPL 6-24, commonly referred to as the "Speedy Trial Act."[4] Several trial courts have noted that "the Palauan Speedy Trial Act was a near-wholesale adoption of the U.S. act" by the same name. *ROP v. Kodep*, 22 ROP 249, 255 (Tr. Div. 2015); *see also, e.g.*, *ROP v. Mobel*, 13 ROP 283, 285 (Ct. Com. Pl. 2006); *ROP v. Iyar*, Crim. No. 04-411, slip op. at *3 (Tr. Div. Nov. 28, 2005); *accord* Senate Judiciary and Governmental Affairs Standing Committee Report No. 6-102 (explaining that "[t]he text of the Bill was adapted from the U.S. federal speedy trial act" with "minor stylistic amendments"). "In adopting the Act, the O.E.K. made one simple change to the statutory provisions in the U.S. Speedy Trial Act. In light of the fact that Palauan law does not provide

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[3] Mengeolt alternatively argues that one of the interrogations in 2013 or 2014 started the 30-day time limit. Because any differences between the interrogations appear to be inconsequential for purposes of § 403(b), we focus here on the first interrogation, which took place in 2009.

[4] The name "Speedy Trial Act" is merely colloquial. The actual title is "[]AN ACT To amend Title 18 of the Palau National Code to provide for the speedy resolution of criminal charges pending against a person."

for grand jury indictments, the O.E.K. replaced the word 'indictment' with 'complaint.'" *Mobel*, 13 ROP at 285.[5]

[¶ 7] By the time of this "near-wholesale adoption," § 403(b)'s analogue in the United States had already been construed by numerous federal Circuit Courts. Their constructions of the provision are of central relevance to our inquiry, under "the general rule that adoption of the wording of a statute from another legislative jurisdiction, carries with it the previous judicial interpretations of the wording." *Carolene Products Co. v. U.S.*, 323 U.S. 18, 26 (1944). In adopting the United States statute with only "minor stylistic amendments," the Olbiil Era Kelulau must have anticipated that the Act's provisions would be construed consistent with then-existing United States case law. 2B Singer, Statutory Construction § 52:2 at 322 (7th ed. 2012) ("When a state legislature adopts a statute which is identical or similar to one in another state or country, courts of the adopting state usually adopt the original jurisdiction's construction."). Accordingly, we presume that the legislature adopted § 403(b) as previously construed by United States courts unless context clearly indicates otherwise.

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[5] Several additional provisions for tolling the speedy trial clock under § 403(h), which do not affect the present case, were also included. House of Delegates Judiciary and Governmental Affairs Standing Committee Report No. 6-102.

B. Under applicable United States case law, section 403(b)'s 30-day time limit does not commence when an individual is released without charge following arrest.

[¶ 8] By 2002, Circuit Courts in the United States had uniformly construed the provision at issue to exclude arrests unaccompanied by criminal charges. *See, e.g.*, *U.S. v. Bloom*, 865 F.2d 485, 489-90 (2nd Cir. 1989); *U.S. v. Summers*, 894 F.2d 90, 90 (4th Cir. 1990); *U.S. v. Amuny*, 767 F.2d 1113, 1120 (5th Cir. 1985); *U.S. v. Blackmon*, 874 F.2d 378, 381 (6th Cir. 1989); *U.S. v. Janik*, 723 F.2d 537, 543 (7th Cir. 1983); *U.S. v. Jones*, 676 F.2d 327, 329-31 (8th Cir. 1982); *U.S. v. Candelaria*, 704 F. 2d 1129, 1131 (9th Cir. 1983); *U.S. v. Sayers*, 698 F.2d 1128, 1131 (11th Cir. 1983); *U.S. v. Mills*, 964 F.2d 1186, 1188-89 (D.C. Cir. 1989). As summarized by one district court:

> Law enforcement officers frequently make arrests upon the basis of their non-judicial opinion that a defendant has committed a crime. The Speedy Trial Act, however, makes it clear that an arrest which is based upon the mere opinion of an enforcement officer is not sufficient to bring the Speedy Trial Act's arrest–indictment interval into play. It is only when a charge is leveled against a defendant based upon a finding of probable cause by a judicial officer that the time limitation of [§ 403(b)] is relevant.

U.S. v. Padro, 508 F. Supp. 184, 185 (D. Del. 1981).

[¶ 9] Mengeolt has failed to identify a single instance of a United States appellate court adopting his proposed construction of § 403(b). United States case law is uniformly adverse to his argument. In order to prevail Mengeolt must explain why the usual rule of statutory interpretation does not apply—that § 403(b) carries with it the construction uniformly given by United States courts. As explained below, his attempts to meet this burden are unavailing.

C. The provisions of the Speedy Trial Act are not controlled by statutory definitions outside the Act.

[¶ 10] Mengeolt first argues that the Republic's custodial[6] interrogation of him falls within the definition of "arrest" contained in § 101. 18 PNC § 101(a) ("'Arrest' means placing any person under any form of legal detention by legal authority."). Thus, argues Mengeolt, insofar as United States case law construing § 403(b) rests on an interpretation of the word "arrest" that differs from § 101(a)'s definition, the definition in § 101(a) controls. *Accord Kodep*, 22 ROP at 258 (stating that Defendant's proposed construction of § 403(b) "flows naturally from the broad Palauan definition of arrest … a definition the United States Act does *not* contain") (*emphasis* in original).

[¶ 11] Any definition of "arrest" contained within the Speedy Trial Act purporting to apply to § 403(b) *would* be conclusive of the inquiry as to the meaning of the term "arrest" as used in § 403(b). However, we are not convinced that the external definition found at 18 PNC § 101(a) provides the meaning of "arrest" as that term is used in § 403(b). The definition of § 101(a) predates the Constitution and was grandfathered into the Palau National Code from the Trust Territory Code as a holdover law. Palau Const. art. XV, § 3(a); 12 TTC § 1(12) ("'Arrest' means placing any person under any form of legal detention by legal authority."). Thus, while the definition of "arrest" contained in § 101(a) continues to apply to those sections of Title 18 that remain from the Trust Territory Code, we conclude that laws enacted at a later time and placed in Title 18 simply "for the purpose of convenient reference and orderly arrangement," 1 PNC § 205, are not bound to a definition that was codified at an earlier time and for different provisions.

D. RPPL 7-51, which amended the sanctions provision in § 404(a)(1), left the operative provisions of § 403(b) unaltered.

[¶ 12] Since its original adoption in 2002, Palau's Speedy Trial Act has

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[6] The trial court did not make any findings regarding whether the Republic's interrogations were custodial, finding the distinction to be irrelevant for purposes of § 403(b). Because it does not affect the outcome of this appeal, we will accept Mengeolt's representations that they were.

been amended once, in 2008, by RPPL 7-51, which amended the Act's provision for sanctions as follows (~~struck-through~~ text stricken, **bolded** text added):

> § 404. Sanctions
>
> (a)(1) If~~, in the case of any individual against whom a complaint is filed charging such individual with an offense,~~ no complaint or information **against an individual** is filed ~~within~~ **until after** the time limit required by section 403(b) as extended by section 403(h) **has passed**, **any** such charge against that individual contained in such **untimely** complaint shall be dismissed or otherwise dropped.…

[¶ 13] All trial decisions of which we are aware construing the act prior to this amendment adopted United States courts' construction of § 403(b) and concluded that not all forms of detention trigger its 30-day filing deadline. *ROP v. Iyar*, Crim. No. 04-411 (Tr. Div. Nov. 28, 2005); *ROP v. Matsutaro*, Crim. No. 05-375 (Tr. Div. Feb. 8, 2006); *ROP v. Mobel*, 13 ROP 283 (Ct. Com. Pl. 2006).

[¶ 14] However, several trial decisions since 2008 have concluded that RPPL 7-51 abrogated those decisions and provided for a 30-day filing deadline following all forms of detention, even those unaccompanied by criminal charges. *E.g. Kodep*, 22 ROP at 257; *ROP v. Wang*, Crim. No. 15-079 (Tr. Div. Jul. 30, 2015); *ROP v. Sasao*, Crim. No. 15-153 (Ct. Com. Pl. Mar. 11, 2016); *ROP v. Jia*, Crim. No. 15-091 (Tr. Div. Apr. 8, 2016). These trial courts focused on the fact that § 404(a)(1)'s dismissal sanction could formerly only be invoked by individuals "against whom a complaint is filed," while the amended provision contains no such limitation. The presence of the limitation under the former statute was one of the factors that trial courts had looked to in construing § 403(b). Based on RPPL 7-51's removal of the limiting language from § 404(a)(1)'s remedy provision, several trial courts have concluded that "the Act no longer requires concurrent charging to start the [30-day filing] clock…." *Kodep*, 22 ROP at 260.

[¶ 15] We are unpersuaded that RPPL 7-51 altered the substantive scope of § 403(b) as previously interpreted by earlier opinions of the Trial Division. Importantly, RPPL 7-51 does not purport to amend § 403(b), which contains

the operative provisions dictating the triggering mechanism for the 30-day filing period. Section 403(b) sets out when the Speedy Trial clock starts, and sets a deadline of 30 days from then for the Republic to file charges. Section 404(a)(1) provides for enforcement of § 403(b), but sets no independent requirements of its own. There is a presumption that "amendatory acts do not change existing law further than is expressly declared or necessarily implied." 1A Singer, Statutory Construction § 22:30 at 363-64. Even as amended by RPPL 7-51, § 404(a)(1) contains no independent filing deadline, relying solely on the deadline prescribed by § 403(b). Palauan courts had already interpreted § 403(b) to require an "arrest[] … in connection with … charges," and the legislature saw fit to leave that section unaltered. *See* 1A Singer, Statutory Construction § 22:35 at 400-02. We see no reason to project onto the legislature's amendment to § 404(a)(1) a silent, implied amendment to § 403(b).

[¶ 16] Nor does the legislative record suggest an intent to overrule the construction of § 403(b) adopted in *Iyar*, *Matsutaro*, and *Mobel*. Indeed, the context in which the legislation was passed suggests that no change in the law was intended. *See* 1A Singer, Statutory Construction § 22:30 at 361 ("Although, generally, a statutory amendment is presumed to have been intended to change the law, legislative history may indicate that the amendment was intended instead as a clarification."). Rather than responding to perceived errors in previous trial court decisions, RPPL 7-51 was passed at the request of the Palau National Code Commission. *See* RPPL 7-51 § 1. "The purpose of the … Bill [was] to make minor corrections to the Palau National Code that ha[d] been deemed necessary by the Palau National Code Commission." Sen. Stand. Comm. on Judiciary and Gov'tal Aff. Rep. No. 7-269. Specifically, the amendment to § 404(a)(1) was drafted in response to comments by the Chief Justice. *Id.* at 2 ("Chief Justice's comments: 'as written the subsection requires the filing of two complaints'"); *accord Mobel*, 13 ROP at 286 ("It would seem improbable that the O.E.K. intended on requiring the Attorney General to file two separate criminal complaints in one case."). Because the provision as originally drafted "may be understood to require two complaints," House Stand. Comm. on Judicary and Gov'tal Aff. Rep. No. 7-192 at 1, the amendment was intended to "remove[] any

ambiguity or any suggestion that two complaints are required," Sen. Rep. No. 7-269, *supra*, at 2.

[¶ 17] Nowhere in the legislative history of RPPL 7-51 is there any mention of: (1) § 403(b), (2) disapproval of courts' previous interpretations of the Act, or (3) an intent to change the scope of the act. Instead, the amending Act is described as effecting only "minor corrections." We therefore conclude that the Act did not intend to overturn Palauan courts' prior construction of § 403(b), which were consistent with United States case law, as applying only to arrests accompanied by criminal charges.

CONCLUSION

[¶ 18] We find no reason to depart from the presumption that the O.E.K. adopted provisions from the United States Speedy Trial Act as uniformly construed by United States courts and the earlier opinions of the Trial Division. Because Mengeolt was released without charge after each interrogation by the Republic, he was not "arrested … in connection with … charges" as necessary to trigger § 403(b)'s filing deadline. His conviction is accordingly **AFFIRMED**.

SO ORDERED, this 30th day of March, 2017.