IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

IN RE CARMENE DERMODY,
Petitioner,
v.

ASSOCIATE JUSTICE HONORA E. REMENGESAU RUDIMCH and ASSISTANT SPECIAL PROSECUTOR INIA RAKARIA TIKOMAIMALEYA,
Respondents.

Cite as: 2024 Palau 7
Special Proceeding No. 24-001
Criminal Case No. 23-025

Decided: February 19, 2024[1]

Counsel for Petitioner ..... Johnson Toribiong

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice, presiding
JOHN K. RECHUCHER, Associate Justice
FRED M. ISAACS, Associate Justice

Appeal from the Trial Division, the Honorable Honora E. Remengesau Rudimch, Associate Justice, presiding.

ORDER GRANTING WRIT OF PROHIBITION

PER CURIAM:

[¶ 1] Before the Court is Carmene Dermody's Petition for a Writ of Prohibition to restrain, enjoin, and prohibit Respondents Associate Justice Honora E. Remengesau Rudimch and Inia Rakaria Tikomaimaleya from

[1] This Order has been revised to include a citation for publishing.

prosecuting Petitioner in Criminal Case No. 23-025, which is scheduled to begin Monday, February 19, 2024.

[¶ 2] Pursuant to the ROP Rules of Appellate Procedure, petitions for writ "must be given preference over ordinary civil cases." ROP R. APP. P. 21(b)(6). A writ of prohibition "is an extraordinary remedy that shall issue only in extraordinary circumstances." *Jones v. Rudimch*, 2020 Palau 20 ¶ 2. Such writs are appropriate only in cases of extreme necessity where: 1) the lower court is about to exercise judicial or quasi-judicial power; 2) exercise of such power is unauthorized by law; and 3) exercise of such power will result in injury for which there is no other adequate remedy. *Id.* ¶ 3.

[¶ 3] Petitioner Dermody seeks a writ to disqualify Respondent Tikomaimaleya from prosecuting her case for lack of authority. Pursuant to 2 PNC § 502, the Office of the Special Prosecutor for the Republic of Palau "shall be headed by a Special Prosecutor appointed for a term of five years by the President with the advice and consent of the Senate . . . ." The Attorney General may appoint an Interim Special Prosecutor who will take office without the advice and consent of the Senate under specified circumstances, which have been satisfied here. Under 2 PNC § 507 et. seq., the Interim Special Prosecutor supervises the staff, and the Attorney General supervises the Interim Special Prosecutor.

[¶ 4] Petitioner Dermody notes Respondent Tikomaimaleya, who is the Assistant Special Prosecutor from the Office of the Special Prosecutor, filed criminal charges against Petitioner on three counts.[2] Petitioner Dermody asserts Respondent Tikomaimaleya "has no authority to prosecute Petitioner as he is neither the Special Prosecutor or [sic] Interim Special Prosecutor under 2 PNC § 501, et seq. which created the Office of the Special Prosecutor." Pet. for Writ, at 4. Petitioner argued this point in pretrial motions, moving twice to dismiss her case and once to certify her interlocutory appeal.

[¶ 5] The trial court denied Petitioner Dermody's motions, relying on *Shmull v. Rosenthal*, 8 ROP Intrm. 261 (2001). The court reasoned that "the

[2] These are: Count One, Theft of Government Property in the First Degree in violation of 17 PNC § 2615; Count Two, Use of Government Property in violation of 33 PNC § 603; and Count 3, Forgery in the First Degree.

language of § 502(d) is permissive, not mandatory" and "the departure of the Special Prosecutor has no bearing on the authority of the lawfully hired Assistant Special Prosecutor who is still under contract to handle cases duly assigned by the Special Prosecutor." Decision and Order, *Republic of Palau v. Carmine T. Dermody*, Criminal Case No. 23-025, at 2.

[¶ 6] In *Shmull*, we carved a narrow exception based on facts distinguishable from the facts here. As Petitioner Dermody observes, "[i]n *Shmull*, at no time was the office of the Special Prosecutor vacant. Mr. Rosenthal, then the Special Prosecutor supervised the work of his assistant special prosecutors." Pet. for Writ, at 11. Mr. Rosenthal attested in his affidavit that while serving as Special Prosecutor, he "followed a policy whereby no litigation is instituted without the express consent of the Special Prosecutor, the substance of all pleadings must be approved by the Special Prosecutor, and all expenditures of the Office must be authorized by the Special Prosecutor." *Id.* at 11-12.

[¶ 7] Here, Respondent Tikomaimaleya has a valid contract as an Assistant Special Prosecutor, but he lacks supervision from a duly appointed Special Prosecutor. As such, the *Shmull* exception does not apply. Allowing an unsupervised assistant to prosecute Petitioner Dermody presents an extraordinary circumstance.

[¶ 8] Accordingly, we **GRANT** the Petition for Writ of Prohibition to stay proceedings unless and until a Special Prosecutor is duly appointed by the President or OEK, or an Interim Special Prosecutor is appointed by the Attorney General.

SO ORDERED, this 19th day of February 2024.