ROP v. Erbai, 11 ROP 247 (Tr. Div. 2004)

REPUBLIC OF PALAU,
Plaintiff,

v.

WAYLARD ERBAI,
Defendant.

CRIMINAL CASE NO. 03-158

Supreme Court, Trial Division
Republic of Palau

Decided: February 27, 2004

LARRY W. MILLER, Associate Justice:

This matter is before the Court on defendant's motion to dismiss for violation of the Speedy Trial Act. For the reasons stated herein, the motion is denied.

The factual basis for the motion is not contested. Defendant was arrested on December 25, 2002, and the information against him was filed on April 11, 2003. Nor does the Republic contest defendant's assertion that although the arrest initially arose out of a separate incident, it was also "in connection with" the offenses charged in the information. *See* 18 PNC § 403(b) *infra*. The questions to be addressed, then, are what time limit applied to these circumstances and whether the Republic complied with that limit.

Three provisions of the Act bear on these question. 18 PNC § 403(b) provides:

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> Any information or complaint 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.

Section 403(f) provides:

> Notwithstanding the provisions of subsection (b), for the first six-calendar-month period following the effective date of this section as set forth in section 405(b), the time limit imposed with respect to the period between arrest and complaint by subsection (c) shall be forty-five days, and for the second such six-month period such time limit shall be thirty-five days.

Finally, Section 405(a) provides:

> The time limitation in section 403(b):

> (1) shall apply to all individuals who are arrested or served with a summons on or after the date of expiration of the six-calendar-month period following the effective date of this section; and
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> (2) shall begin to run on such date of expiration as to all individuals who are arrested or served with a summons prior to the date of expiration of such six-calendar-month period, in connection with the commission of an offense, and with respect to which offense no information or complaint has been filed prior to such date of expiration.

The first thing to notice about these provisions is that, read literally, § 403(f) makes little sense. Although it begins with a reference to § 403(b), it then talks about § 405(b), which relates not to § 403(b) but to § 403(c), and then refers to § 403(c) itself, which, unlike § 403(b), does not impose any "time limit . . . with respect to the period between arrest and complaint." Without re-inventing the wheel, it suffices to say that the Court fully agrees with Justice Michelsen's conclusion in *ROP v. Wong*, Criminal Case No. 03-355, that these cross-references were the result of a scrivener's error, that § 403(f) was meant to refer to §§ 405(a) and 403(b), respectively, and that "the intent of the legislature will be given effect by construing the statute by what was meant, rather than attempting to literally apply a demonstrable error." Order granting Motion to Dismiss, filed January 16, 2004, slip op. at 4.

It still remains to interpret these sections as construed to determine what time limit applied in the circumstances of this case. On this point, the Court respectfully parts company with Justice Michelsen. Justice Michelsen rejected the Republic's contention that § 405(a) created a six-month period during which no time limit applied, finding it "improbable that [the OEK] intended an initial period of no change before the beginning of the year-long transition period" provided for in § 403(f). For two reasons, however, the Court believes the Republic's position is ⊥249 correct.[1]

First, the Court believes that adopting the Republic's Position is the only way to harmonize § 403(f) and § 405(a) and to give meaning to the latter. If the OEK wished the two

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[1]There is actually a third reason though it is not particularly weighty. Agreeing with Justice Michelsen that Palau's Speedy Trial Act was adapted from its U.S. counterpart, the Court notes that the few cases on point it could find seemed to conclude that the phase-in periods provided for in 18 U.S.C. § 3161 (the counterpart to § 403) followed the expiration of the initial 12-month delay in the effective date provided for in 18 U.S.C. § 3163 (the counterpart to § 405). *See United States v. Noll*, 600 F.2d 1123, 1126 n.4 (5th Cir. 1979) ("Section 3161 phases in these time limits over a four-year period following the effective dates established in section 3163(a) and (b)."); *United States v. Carini* , 562 F.2d 144, 147 n.2 (2d Cir. 1977) (referring to July 1, 1976, as the date on which the time limitations of the Speedy Trial Act became applicable); *United States v. Garza* , 547 F.2d 1234, 1235 (5th Cir. 1977) ("Since appellant was arrested prior to July 1, 1976, the Speedy Trial Act of 1974 is inapplicable."); *cf.* 18 PNC § 3163 (a)(1),(b)(1) (referring to "the date of expiration of the twelve-calendar-month period following July 1, 1975"). The issue was somewhat academic in the U.S., however, since a separate provision (not copied in Palau's version) delayed the effectiveness of the dismissal sanction until all the phase-in periods had been completed. *See* 18 U.S.C. § 3163 (c); *Carini*, 562 F.2d at 148 (quoting legislative history for the proposition that "no sanction . . . is in effect during the phase-in period").

six-month periods set forth in § 403(f) to run from the effective date of the Act, *see* RPPL 6-24, § 2, it could have said so explicitly without mentioning § 405 at all. It did not do so, however, referring instead to the "the first six-calendar-month period following the effective date of this section *as set forth in section 405(b)*," which, as noted above, and as did Justice Michelsen, the Court construes as a reference to § 405(a).

By the same token, if one construes § 403(f) as beginning the phase-in period immediately upon the effective date of the Act, then it is unclear what purpose § 405(a) was to serve or how it should be interpreted. Justice Michelsen accurately describes § 405(a) as "differentiat[ing] between individuals who are arrested *after* the expiration of the six-calendar-month period following the effective date of the statute from these arrested *before* that period," but it is unclear to the Court what that differentiation is meant to accomplish since § 403(f), by its plain terms, already differentiates between the first six months and the second six months of its operation.

The only way to give meaning to both provisions, as the Court sees it, is to construe § 403(f)'s reference to "the effective date of this section as set forth in section 405([a])" to be the "expiration of the six-calendar-month period following the effective date of" the Act as set forth in § 405(a)(1).[2] Section 405(a)(2) then makes clear that a defendant who was arrested but not yet charged during that first six-month period is still within the protection of the Act, but that the time limit does not begin to run until those six months have expired.[3]
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Looking beyond the language of the various provisions, the Court is also assisted (as it believes Justice Michelsen was not), by the legislative history of the Act which, contrary to his surmise, shows that the OEK did contemplate an intend "an initial period of no change before the beginning of the year-long transition period." *See* House of Delegates Standing Committee Report No. 6-22, at 2 (July 10, 2001) ("The law does not have effect for the first six months following its enactment."); Senate Standing Committee Report No. 6-102, at 3 (April 9, 2002) ("To facilitate the transition of the new speedy trial system, the new 18 PNC 405 provides for a six-month delay in the effective date of the time limits for filing the information or complaint . . . .").

The Court recognizes that resort to legislative history may be inappropriate where the language of the statute is unambiguous. But the meaning of the provisions at issue is anything but plain. There are obvious mistakes in the cross-references, as Justice Michelsen found,[4] and even when those mistakes are corrected, the interplay of the provisions is something about which

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[2]Adding confusion upon confusion, § 405(a)(1)–a section meant to define "effective dates"–refers within itself to "the effective date of this section." Since there is no further section setting the effective date of the "effective dates" provision, that reference can only mean the effective date of the Act.

[3]Again, on Justice Michelsen's reading, it is difficult to square § 405(a)(2) with § 403(f). If § 403(f) is interpreted as imposing a 45-day limit for that first six-month period, § 405(a)(2) seems to nullify it by saying that you don't begin counting those 45 days until those six months have expired.

[4]*See* 73 Am. Jur. 2d *Statutes* § 122 (2001) ("[W]here the real intent of the legislature is manifest, and would be defeated by an adherence to the terms of the mistaken reference, the mistaken reference will be regarded as surplusage, or will be read as corrected, in order to give effect to the legislative intent.").

reasonable minds may differ, and indeed already have.[5] If it is not the province of the judiciary to legislate but to enforce the intent of the legislature, then it is also not the proper role of the Court to put on blinders and disregard that intent.[6]

The bottom line of the Court's analysis is that the phase-in periods set forth in 18 PNC § 403(f) started only after the six-month-period provided for in § 403(a) (1) had lapsed. That leaves one question still to be answered. As the Court has interpreted § 405(a)(2), for a defendant arrested but not charged during that first six-month period–as was the defendant herein–the 45-day limit between arrest and information began to run on the "date of expiration" of the first six-month period following the effective date of the Act. Pursuant to § 2 of the Act, it became effective "upon its becoming law without [the President's] approval," which was on August 25, 2002. The Republic argues that the "date of expiration" of the first six-month period was six months later, or February 25, 2003.[7] ⊥251 Defendant contends, however, that the "date of expiration" was the last day of that period, or February 24, 2003. If the Republic is right, then the filing of the information on April 11, 2003, was exactly 45 days later and therefore timely. If defendant is right, it was a day late.

Contrary to the hope expressed at oral argument, neither counsel nor the Court have been able to locate any useful precedent on this point,[8] and there is no clear answer. It is certainly arguable that the "date of expiration" could refer to the last day of some expiring period–for example, "Your membership in the Bar expires on December 31." In the statutory scheme, however, it seems more plausible–and thus better reflective of legislative intent–that "date of expiration" was meant to offer to the first day (or moment) when that time period was finished–12:00 a.m. on February 25, rather than 11:59:59 on February 24. Defendant's position, as the Court sees it, effectively converts the six-calendar-month period created by section 405 to six calendar months minus a day. The OEK could have meant to do that, but the Court can see no good reason why it would.

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[5]*See generally Isimang v. Arbedul*, 11 ROP 66, 70 n.4 (2004) ("[A] statute is ambiguous where it is open to two or more constructions, or where it is of such obscure or doubtful meaning that reasonable minds might disagree or be uncertain as to its meaning.") (quoting *Statutes*, *supra*, § 114).

[6]*See United States v. Fisher*, 6 U.S. 358, 386 (1805) (Marshall, C.J.) ("Where the mind labors to discover the design of the legislature, it seizes every thing from which aid can be derived . . . .").

[7]The Republic proposed, but did not press, an alternative reading whereby the six-calendar-month period began on September 1, 2002, the beginning of the first calendar month after the act became law. The Court admits to some confusion as to why the Act (and the U.S. Act) says six *calendar* months instead of just six months. While a calendar day is easily contrasted with a working day, the only contrast the Court can think of for a calendar month is perhaps a lunar month. Nevertheless, the Court has never heard of a statutory scheme (and the Republic has pointed to none) that was written with that intention.

[8]The *Carina* case, *see supra* n.1 appears to address this issue, but there seems to be a problem either with its arithmetic or its English. To the extent it says that the government had 180 days " *after* July 1, 1976, the date on which the Speedy Trial Act time limitations . . . began to run," *see* 562 F.2d at 147 (emphasis added), to bring the defendant to trial, it appears to bolster the Republic's position here. But it also says (and the parties to the case apparently agreed) that the 180th day after July 1, 1976, was December 27, 1976. By this Court's counting December 27, 1976, was the 180th day after July 1, 1976, only if–in accordance with defendant's position–one starts from June 30 and counts July 1 as day one. On that understanding, however, the *first* day "after July 1, 1976" was July 1, 1976.

For all of these reasons, defendant's motion is denied. A status conference to set a new trial date is set for March 5, 2004, at 1:00 p.m.