

Pamintuan, et al., v. ROP, 14 ROP 186 (2007)
LOLITA PAMINTUAN, et al.,
Appellants,

v.

REPUBLIC OF PALAU,
Appellee.

CRIMINAL APPEAL 07-001
Criminal Case No. 06-183 and 06-212

Supreme Court, Appellate Division
Republic of Palau

Decided: May 22, 2007

[counsel names not listed]

PER CURIAM:

Before the Court is Appellant's Motion for Stay of Execution of Sentence Pending Appeal. While Appellant submits that this motion is made pursuant to Rule 8 of the ROP Rules of Appellate Procedure, applications for release after a judgment of conviction properly fall under the terms of Rule 9. Appellant was tried and convicted of one count of advancing prostitution and seven counts of people trafficking. She is currently incarcerated and now asks this Court to release her while her appeal of this conviction is pending. For the reasons stated below, the **¶187** Court denies this motion.

Appellant motioned the trial court to release her pending appeal pursuant to Rule 46 (c) of the Rules of Criminal Procedure, but the trial court denied the motion, stating that Appellant's motion failed to raise a substantial question of law or fact. Appellant presents two issues in her instant motion before the Appellate Division. First, she argues that the time necessary to prepare the transcript for the appeal in the Appellate Division will exceed the amount of time she is required to serve. Second, Appellant claims that her motion presents a substantial question of law because there was no evidence presented to the trial court that shows that Appellant advanced or profited from the illegal activities occurring at Carnival. Appellant also claims that none of her activities as a recruiter can, as a matter of law, be construed as people trafficking.

In order to grant a motion for release pending appeal from a judgment of conviction, the Court must consider whether the motion presents a substantial question of law or fact. The "substantial question" test requires the Court to determine whether the question raises a substantial doubt or is a "close" question. The issue is whether "the appeal could readily go either way, that it is a toss-up or nearly so." *Omelau v. ROP*, 3 ROP Intrm. 258, 258 (1993), citing *U.S. v. Greenberg*, 772 F.2d 340, 341 (7th Cir. 1985). A "substantial question" is a question which the Court, without having had an opportunity to consider the parties' appellate

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briefs or review the record, could resolve in appellant's favor as easily as in appellee's favor. *King v. ROP*, 5 ROP Intrm. 131, 133 (1995). Even though a question may be "substantial" because it is a close call, if its ultimate resolution in appellant's favor is not likely to require the release of appellant from incarceration, release pending appeal is not proper. *Id.*

Although Appellant's argument regarding the transcript presents a concern in the pending matter, it does not present a substantial question of law. Rule 9 does not contemplate, and we have never found, that a stay should be granted solely because of the anticipated length of the appeal without regard to its merits. Having said that, the Court understands that the preparation of a written transcript in this case may present an obstacle to the expeditious resolution of this appeal. As Appellant correctly notes, such a long period of preparation may last longer than the time of imprisonment she is required to serve. However, because a substantial portion of Appellant's appeal challenges the trial court's findings on the claim of insufficient evidence, reference to the trial record is undoubtedly a necessary part of this appeal. As such, pursuant to our authority under Rule 2 of ROP Rules of Appellate Procedure, this Court sees fit to allow Appellant to proceed without a written transcript. In lieu of a written transcript, at Appellant's election,¹ the digital audio recordings of testimony may be used to support Appellant's claims. Any reference to the testimony must include a pinpoint citation to the exact date and time the testimony was offered so that the testimony **L188** may be easily located on the CD version of the transcript. Factual arguments not supported by such an adequately precise pinpoint citation, including the day, hour, minute, and second the testimony was offered, will not be considered properly submitted.

Appellant's second argument challenges the sufficiency of the evidence presented at trial. Appellant's motion contends that there is "no evidence whatsoever that [Pamintuan] did advance and profit from any prostitution activity or any illegal business at the Carnival Restaurant." Appellant's Memo of Points and Authorities at 5. The trial court specifically stated that it did not find the testimony of Pamintuan credible, particularly with respect to her testimony regarding her knowledge of the activities occurring at Carnival. Appellant's Memo also notes "none of her activities as a recruiter could be construed as a matter of law as people trafficking." Appellant's Memo of Points and Authorities at 7. Given the trial court's explicit findings on these matters, though, and the deference this Court gives to the trial court's credibility determinations, Appellant's argument does not present a substantial question of law.

On this motion for a stay of execution of sentence and in the absence of a full trial record, this Court cannot disregard the findings of the trial court. The merits of those findings are not currently at issue; the only question currently before the panel is whether Appellant has demonstrated that a substantial question of law exists. Because the Court finds that Appellant fails to make such a showing of a substantial legal question, her motion for a stay of execution of sentence pending appeal is DENIED. Although appellant may succeed on the merits after the panel has had the opportunity to evaluate parties' arguments in full, nothing in the instant motion presents a substantial question of law.

¹If Appellant elects to forgo a written transcript, opening briefs in this matter shall be due within 45 days after Appellant has been served with the audio recordings of the testimony and evidence.

MILLER, J., concurring:

Although the Findings of Fact and Conclusions of Law made by the trial court include the statement that Appellant “knew of the prostitution going on at Carnival,” *id.* at 3, it is unclear to me at what point in time she was found to have such knowledge since the trial court also found that she had “offer[ed] the women no assistance *once she learned of the exploitation they were facing.*” *Id.* at 12. (emphasis added). In my view, if the record discloses only the latter—that Appellant failed to help the victims “once she learned” Carnival’s true business, then I am doubtful that her conviction for Advancing Prostitution can stand.² Since that is a question that cannot be answered without reference to the record, I concur in the denial of the stay.

²I am likewise doubtful that Appellant can be convicted of People Trafficking unless there is evidence that she knew (or acted in reckless disregard of facts) that they would be subject to sexual exploitation upon their arrival in Palau.