In re Sugiyama, 1 ROP Intrm. 282 (1985)

IN THE MATTER OF PETITION OF MASANORI SUGIYAMA (HABEAS CORPUS).

IN THE MATTER OF THE APPLICATION OF NGETWAI F. OIWIL, DAVE NGIRAKED, KEIKO SUGIYAMA, and DEBESOL JOSEI
Petitioners/Appellants,

v.

REPUBLIC OF PALAU,
Respondent/Appellee.

CIVIL APPEAL NO. 15-85
Civil Action Nos. 114-85 & 117-85
(Consolidated)

Supreme Court, Appellate Division
Republic of Palau

Decision on appeal from orders denying writs of habeas corpus
Decided: December 13, 1985

Counsel for Appellants: Carlos H. Salii and Johnson Toribiong
Counsel for Appellee: Philip D. Isaac

BEFORE: MAMORU NAKAMURA, Chief Justice; ALAN R. LANE, Associate Justice; ROBERT WARREN GIBSON, Associate Justice.

GIBSON, Justice:

The Motion for joinder of Petitioner/Appellant Debesol Josei in Appeal No. 15-85 is GRANTED.

Petitioners appeal from Civil Action Nos. 114-85 and 117-85, Trial Division, and the ORDERS denying their Petitions, for the issuance of a Writ of Habeas Corpus, said Orders bearing dates of August 6, 1985, and August 9, 1985.

On August 6 and on August 12, 1985, the Trial Court likewise denied Petitioners' Motions for Stay of Execution and for Release Pending Appeal.

⊥283 Petitioners are now before this Court seeking a Reversal of the Orders denying issuance of the Habeas Corpus Writs, and likewise for Stays of Execution and for Release Pending a Review of Trial Court's Actions.

Defendants are in the custody of the Republic of Palau Department of Public Safety

where they are being held pursuant to Warrants of Arrest issued out of the United State District Court for the District of Guam upon complaints filed in that Court charging Petitioners with violations of Title 21 U.S.C. §§ 841(a)(1), 952(a), and 960, the "Controlled Substance Act" PL 91-23, 84 Stat. 1242, as amended. The Warrants bear [various] dates from August 2, 1985, are in standard form, issued over the signature of a United States District Court Judge, and direct the United States Marshal or any peace officer to execute same.

The scope and purpose of the Writ of Habeas Corpus is to inquire into the cause of a person's imprisonment. *In Re Yusim*, 7 TTR 353 (App. Div. 1976); *In Re Techur*, 7 TTR 355, (App. Div. 1976). The Writ is designed for the purpose of effecting the 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." *Ennato v. Kintin*, 5 TTR 243, (Tr. Div. 1970), at p. 247, and is a judicial determination of a civil case or controversy. *Ex parte Quirin*, 317 U.S. 1; 63 S.Ct. 1 at p. 9 (1942).

Upon the filing of an application for issuance of a Writ, the court may issue same and fix a return date at which time the parties must appear and show cause, or, as done here, it may consider and determine whether the facts alleged, if proved, would warrant the issuance of the Writ. *Figir v. Trust Territory*, 4 TTR 368, (Tr. Div. 1969).

The procedural rules governing the Writ of Habeas Corpus in this jurisdiction are found in Rules 22 and 23, ROP R. App. Pro. In the instant cases the Trial Judge, acting upon the jurisdictional mandate of 21 U.S.C. § 801, *et seq.*, denied the Writ. From that denial petitioners have appealed to the Court. We affirm the decision below.

Petitioners forge a three pronged challenge to the operative force and effect, in Palau, of the aforementioned "Controlled Substances Act."

> 1. They allege that the jurisdiction of the United States District Court of Guam has no force and effect beyond the geographic boundaries of Guam by reason of the Organic Act establishing that territory as an ⊥284 unincorporated possession of the United States, 48 U.S.C. § 1421, as amended, and that the Republic of Palau admittedly, not being included within the defined territorial limits of the Territory of Guam, is therefore without the jurisdiction of said Court and consequently its warrants bear no mandate of execution in Palau.
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> 2. They charge that since nowhere within the substantive language of Sections 841, 952 and 960 of the Controlled Substances Act do the words "State" appear, and that as the only reference to the Trust Territory of the Pacific Islands within such act is found in Section 802(24) defining "State" as including the Trust Territory of the Pacific Islands, its absence in the penal sections, 841, 952 and 960, imply either (i) the Congressional intent not to include the Trust Territory of the Pacific Islands (and thus Palau) within the prohibitory sections of the Act, or (ii) an oversight on the part of the Congressional draftsmen in omitting the word "State" from such sections and using instead only the words "United States" or

customs territory of the United States."

3. Lastly, Petitioners suggest that the United States, having ratified the Palau Constitution and the establishment of the judicial branch of its government, may not now unilaterally usurp the function of such judicial branch by enacting and making applicable to the Republic of Palau, criminal laws, the enforcement of which transcend the territorial boundaries established by the Palau Constitution, nor, in the interest of due process, deprive the people of Palau of access to their own courts.

We respond to these allegations as follows:

a. Petitioners' first challenge is to the jurisdiction of the United States District Court of the Territory of Guam. They advance the proposition that the jurisdiction of that court is limited in its reach to the geographic boundaries of Guam by virtue of 48 U.S.C. § 1424(a), as amended. This in turn directs us to a reading of 48 U.S.C. § 1421 to find the definition of the phrase "Territory of Guam". Were we, in keeping with Petitioners' contention, to seek out these exact geographical boundaries resort must be had to the Treaty of Paris of December 10, 1898, ending the war between the United States and Spain, an exercise which by reason of the limited availability of research material we elect not to undertake. It suffices that 48 U.S.C. § 1421(a) as it now reads as of April 1, 1984, vests in the United States District Court of Guam all powers ⊥285 authorized to the District Court of the United States; as we hereinafter show the provisions of Title 21 U.S.C. § 841, 952 and 960 are made specifically applicable to the Trust Territory of the Pacific Islands of which the Republic of Palau is an adjunct member; and, taking judicial notice of the proximity of Guam to Palau, it follows that the United States District Court of Guam is the most logical and legally apt United States court within which United States laws may be enforced. We therefore do not find Petitioners' jurisdictional argument to be well taken. Before passing to a consideration of Petitioners' further challenges we deem it appropriate to point out that while the primary purpose of the Writ of Habeas Corpus is to test the jurisdiction of the court having custody of the accused to retain such custody, in *Re Yusim, Id., In re Techur, Id.*, the Writ reaches only jurisdictional and procedural errors. *In Re Application of Matagolai*, 6 TTR 58, (Tr. Div. 1972); *Purako v. Efou*, 1 TTR 236 (Tr. Div. 1955). The Warrants of Arrest issued by the United States District Court of Guam upon the force of which Petitioners were apprehended and are to be returned to Guam to stand trial are but part of the procedural enforcement of the Controlled Substances Act, the substantive provisions of which this Court must honor. Thus, while we may examine Petitioners' request for release from the Warrants' onus we are not empowered to intrude for the purpose of determining whether or not that Court had subject matter jurisdiction. Our examination is limited to the aspect of warrant validity on its face (a four corners examination) and to determine if a colorable cause of the invocation of the United States District Court's jurisdiction can be found within the warrant itself, i.e., was the same issued under "color of law." *Beauregard v. Wingard*, 230 F.Supp. 167 (D.C. Cal.) (1963); *Kuhnhausen v. Stadelmen*, 148 P.2d 239 (Ore.) (1944). Under the authority of these cited cases we find sufficient "color" present, and believing that we have thus exhausted the limits of our jurisdictional inquiry direct attention to *Davis v. United States*, 185 F.2d 938, (9th CA.)(1950), at p. 943, as pointing to the fact that the question of geographical jurisdiction of the United States

courts is to be properly raised at the time of trial and not by way of Writ of Habeas Corpus.

b. Petitioners attack the warrants having issued out of, not a court of competent jurisdiction they say, but rather one whose jurisdiction does not extend to and encompass the Republic of Palau. They arrive at this contention by comparing 21 U.S.C. § 802(24) defining "State" with 21 U.S.C. § 841, 952 and 960 describing the prohibited ⊥286 acts as importing "into the customs territory of the United States from any place outside thereof but within the United States or to import into the United States from any place outside thereof any controlled substance." They then turn to 21 U.S.C. § 802(26) and finding the definition of United States absent of any reference to the Trust Territory of the Pacific Islands, conclude that the Act is inapplicable to Palau. The fallacy in this permutation is that 21 U.S.C. § 951(a)(2) defines the term "customs territory of the United States" to have the "meaning assigned to such term by General Headnote 2 to the Tariff Schedules of the United States", which latter reads in significant part, "customs territory of the United States" as used in the schedules includes only the States, the District of Colombia, and Puerto Rico." (emphasis original). The reference to "States" sends us back via 21 U.S.C. § 951(b) to 21 U.S.C. § 802(24) which defines "States" as including the Trust Territory of the Pacific Islands. Ergo, the circle of jurisdiction is completed.

We also point out that by this circuitous semantic route, the phrase, "into the United States from any place outside the United States" is also validated of application to Palau.

c. Petitioners' third oppugn is that they should be prosecuted in the courts of Palau rather than those of the United States. We answer this by pointing out that they are charged with importation into the United States from Palau, not vice versa. The United States, as we have previously noted, made the provisions of Title 21 U.S.C. applicable throughout its entire jurisdiction. This it is privileged to do:

> Under the Trusteeship Agreement the United States, as administering authority, "may apply to the Trust Territory, subject to any modifications which the administering authority may consider desirable, such laws of the United States as it may deem appropriate to local conditions and requirements". *Sechelong v. Trust Territory*, 2 TTR 526, (Tr. Div. 1964), at 530.

The fact that Palau has seen fit to establish its own courts and adopt its own Controlled Substances Act, 63 TTC 251, *et seq.*, does not militate against the authority of the United States to enforce its jurisdiction-wide applicable laws in its ⊥287 own courts irrespective of obvious concurrent nomenclature and parallel intent. Neither does such enforcement impinge upon defendants' rights of due process. Petitioners are charged with the violation of Title 21 U.S.C. not 63 TTC and as such have no claim to the right to elect their situs of prosecution. They are to be tried by a court authorized to act upon the subject matter of their accusation and having jurisdiction of their persons. The United States District Court of Guam is the closest District Court to Palau, the most convenient to their source of citizenship, and the point at which the alleged infraction came about. The degree of concurrence of the factors necessary to meet the demands of due process could be no greater. The fact that the punishment may be less severe or the supposition greater that the decision might be more favorable is no basis for the assumption

by Palau of the right to punish violations of United States law which occurred in United States Territory, jurisdiction over which is exclusively vested in the courts of the United States.

Having affirmed the Order of the Lower Court denying Petitioners' application for a Writ of Habeas Corpus we likewise deny their Motion for a Stay of Execution and for Release Pending Appeal.