Ongalibang v. ROP, 8 ROP Intrm. 219 (2000)
RAY ONGALIBANG,
Appellant,

v.

REPUBLIC OF PALAU,
Appellee.

CRIMINAL APPEAL NO. 99-03
Criminal Action No. 98-83

Supreme Court, Appellate Division
Republic of Palau

Argued: September 13, 2000
Decided: September 15, 2000

Counsel for Appellant: James E. Hollman

Counsel for Appellee: Steven Carrara

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; DANIEL N. CADRA, Senior Land Court Judge.

MILLER, Justice:

Appellant Ray Ongalibang appeals from a Sentencing Order which held that the trial court had "no discretion to order work release" because it was bound by a statutorily prescribed mandatory minimum sentence. We reverse.

Background

On March 5, 1999, the Republic of Palau charged Ongalibang with possession of a firearm in violation of 17 PNC section 3306(a) and possession of ammunition in violation of 17 PNC section 3306(b). Ongalibang pleaded guilty to attempted firearms possession in violation of 17 PNC section 3306(a) and 17 PNC section 104. The Plea Agreement provided that Ongalibang would be sentenced to seven and one half ⊥220 years' imprisonment and would be permitted to argue for work release at a sentencing hearing.

After the hearing, the trial court issued a Sentencing Order imposing seven and one half years of imprisonment, but holding that it had "no discretion to order work release for this offense" because of a statutory mandatory minimum sentence. The court, citing *Ngemaes v. Republic of Palau,* 4 ROP Intrm. 250 (1994), which held that a mandatory minimum sentence precluded a sentencing court from suspending any part of the sentence, concluded that work release "would similarly be contrary to the legislative intent" to mandate a minimum sentence.

Ongalibang then brought this appeal.

Analysis

Whether the trial court was precluded from ordering work release in this case presents a question of law that we consider *de novo*. *See Becheserrak v. ROP,* 8 ROP Intrm. 147, 147 (2000). The Palau National Code provides that a person convicted of firearms possession shall "be imprisoned for not less than 15 years." 17 PNC § 3306. The attempt statute provides that a person convicted of an attempt to commit an offense:

> shall be punished by imprisonment for a term not exceeding one-half of the maximum term . . . which may lawfully be imposed upon conviction for commission of the offense attempted . . . .

17 PNC § 104. The trial court concluded that under these statutes, "seven and one half years of imprisonment is the mandatory minimum sentence" for attempted firearms possession. We disagree. The attempt statute does not impose a mandatory minimum of "not less than" one half of the minimum sentence for the target offense. Rather, it imposes a maximum, which shall "not exceed[]" one half of the maximum sentence for the target offense. Thus, there is no mandatory minimum sentence for attempted firearms possession. [1] Because Ongalibang pleaded guilty only to the offense of attempted firearms possession and there was no mandatory minimum sentence for that offense, the trial court erred in holding that the legislature's imposition of a mandatory minimum sentence precluded it from considering the issue of work release. [2] We leave to another day whether a true mandatory ⊥221 minimum sentence would require a different result.[3]

Conclusion

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[1] The OEK has imposed mandatory minimum sentences for attempted murder, but not for any other attempt offense. *See* 17 PNC § 104(b).

[2] The parties disputed the effect of a mandatory minimum sentence and did not address whether there is a mandatory minimum sentence for the offense at issue. However, "when an issue . . . is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law." *Kamen v. Kemper Fin. Servs., Inc.*, 111 S.Ct. 1711, 1718 (1991). The Court "may consider an issue antecedent to . . . and ultimately dispositive of the dispute before it, even an issue the parties fail to identify." *United States Nat'l Bank of Oregon v. Independent Ins. Agents*, 113 S.Ct. 2173, 2178 (1993) (citations and internal quotations omitted). Because any opinion regarding the effect of a mandatory minimum sentence would be merely advisory where there is no mandatory minimum sentence, we first address the antecedent and ultimately dispositive issue of whether any mandatory minimum sentence applies. *See, e.g., Johnson v. United States*, 120 S.Ct. 1795, 1801-02 (2000) (raising question that "neither party addresses" of whether statute applies retroactively, which must decided before resolving *ex post facto* challenge to the application of that statute).

[3] We also do not address the general authority of the courts to order work release, which has long been the practice of sentencing courts and which the Republic has not challenged here.

For the foregoing reasons, we REVERSE the trial court's holding that a mandatory minimum sentence foreclosed consideration of work release for the offense of attempted firearms possession, and REMAND to the trial court for consideration of whether to order work release in this case.