

*ROP v. Udui*, 8 ROP Intrm. 61 (1999)  
**REPUBLIC OF PALAU,**  
**Appellant,**

v.

**ANGELO UDUI,**  
**Appellee.**

CRIMINAL APPEAL NO. 99-01  
Criminal Case No. 8-96

Supreme Court, Appellate Division  
Republic of Palau

Decided: November 1, 1999<sup>1</sup>

Counsel for Appellant: Michael Rosenthal and Gary Soberay, Office of the Special Prosecutor

Counsel for Appellee: Oldiais Ngiraikelau

BEFORE: JEFFREY L. BEATTIE, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice.

BEATTIE, Justice:

In this appeal, we are required to determine whether 14 PNC § 603(a) bars the government from appealing a judgment of the Trial Division dismissing a criminal case on the grounds that it was filed beyond the statute of limitations. We hold that the government is barred from appealing and dismiss.

Appellee Udui was originally charged with committing the crimes of conspiracy and bribery in December 1995 in an information filed by the previous Special Prosecutor on January 8, 1996. One year later, while those charges were pending, the previous Special Prosecutor resigned, and the Government requested that the trial on the charges against Udui be continued until the appointment of a new Special Prosecutor. The continuance was initially granted, but on September 18, 1997, with no prospects for the appointment of a new Special Prosecutor, being evident, the Trial Division granted Udui's motion to dismiss the information for lack of prosecution. On December 14, 1998, the newly-appointed Special Prosecutor re-filed the original information. Udui moved to dismiss the new filing on statute of limitations grounds, and the Trial Division granted Udui's motion on March 17, 1999. The Government now appeals, claiming the statute of limitations tolled upon the filing of the original information.

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<sup>1</sup> Appellant has specifically requested no oral argument. Upon our review of the briefs and record, the panel finds this case appropriate for submission without oral argument pursuant to ROP R.App.Pro. 34(a).

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Before reaching the merits of the Republic’s appeal, we must first deal with a threshold issue raised by Udui. He contends that 14 PNC § 603(a) prohibits the Government from maintaining the instant appeal. That statute reads:

**§ 603 Right of Republic government to appeal**

(a) In a criminal case, the government shall have the right of appeal only when a written enactment intended to have the force and effect of law has been held invalid . . . .

The Government concedes that, if valid, the statute bars the instant appeal. However, it argues that the statute is inconsistent with Article X, Section 6 of the Palau Constitution, which provides that “the appellate division of the Supreme Court shall have jurisdiction to review all decisions of the trial division and all decisions of lower courts.” 162

A reading of the plain language of 14 PNC § 603(a) reveals that it does not speak directly to this Court’s jurisdiction” to entertain criminal appeals by the Government, but rather, speaks to the Government’s “right to appeal.” That difference is significant. We see no impediment under Article X to the Government’s setting forth limits to **its own right** to appeal orders entered in criminal cases.<sup>2</sup>

In view of the foregoing, we hold that 14 PNC § 603(a) does not seek to place any limitation on the jurisdiction of this Court and therefore, does not violate Article X, Section 6 of the Palau Constitution. Since the Government concedes that its appeal may not be maintained under 14 PNC § 603(a) as written, the instant appeal is DISMISSED.

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<sup>2</sup> The statute is more accurately described as one creating a limited right to appeal, rather than limiting an otherwise existing right to appeal. This is because of the well-established common law rule that, in the absence of explicit statutory authority, the government has no right to appeal dismissals of criminal charges against a defendant. *See e.g. Abney v. United States*, 97 S.Ct. 2034 (1977); *Carroll v. United States*, 77 S.Ct. 1332, 134-43 (1957). This rule does not depend on the particular language of the U.S. Constitution, as it predates the founding of the U.S. and traces its origins back to the common law of England. *See United States v. Sanges*, 12 S.Ct. 609 (1892). The limited scope of appeals permitted under 14 PNC §603(a) reflects the common law understanding that “appeals by the government in criminal cases are something unusual, exceptional, not favored. *Carroll*, 77 S.Ct. at 1336.