

actually pays) his attorney is irrelevant. Bank of the FSM v. Truk Trading Co., 16 FSM Intrm. 467, 471 (Chk. 2009).

Sandy shall therefore submit his attorney fees and costs request by April 15, 2010. The state may submit its response by April 26, 2010.

IV. CONCLUSION

Compensatory damages of \$1,845.12 are awarded in Elias Sandy's favor against the State of Chuuk, from which the state shall make the appropriate tax deductions and payments. Sandy is hereby reinstated to his former Chuuk public service system position provided that he, no later than May 7, 2010, presents himself to the Chuuk Department of Education ready, willing, and able to work and ready for assignment. Sandy shall submit his costs and attorney's fees request by April 15, 2010, to which the state may respond by April 26, 2010. No liability by either Jesse Mori or the Department of Administrative Services having been shown, these defendants are dismissed.

The clerk shall enter judgment accordingly.

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FSM SUPREME COURT APPELLATE DIVISION

STATE OF KOSRAE,)	APPEAL CASE NO. K4-2009
)	
Appellant,)	
)	
vs.)	
)	
SMEHL D. JIM,)	
)	
Appellee.)	
_____)	

ORDER OF DISMISSAL

Decided: March 26, 2010

BEFORE:

Hon. Martin G. Yinug, Associate Justice, FSM Supreme Court
Hon. Dennis K. Yamase, Associate Justice, FSM Supreme Court
Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court

APPEARANCES:

For the Appellant:	Snyder H. Simon, Esq.
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For the Appellee: Harry Seymour, Esq.
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HEADNOTES

Appellate Review – Briefs, Record and Oral Argument; Appellate Review – Motions

Motions, even motions to dismiss an appeal, may be decided without oral argument. Kosrae v. Jim, 17 FSM Intrm. 97, 98 (App. 2010).

Appellate Review – Decisions Reviewable

In a prosecution appeal from an acquittal in a Kosrae State Court criminal case, the appellate court has no jurisdiction to reverse a not guilty finding and to either order a guilty finding entered or to order a new trial and it has no jurisdiction to render an advisory opinion on statutory construction or to decide a moot appeal. It will accordingly dismiss the appeal. Kosrae v. Jim, 17 FSM Intrm. 97, 99 (App. 2010).

* * * *

COURT'S OPINION

PER CURIAM:

This comes before the court on appellee Smehl D. Jim's Motion for Dismissal of Appeal, filed January 6, 2010. Jim's motion is granted. Our reasons follow.

I.

Smehl D. Jim was arrested and charged disturbing the peace (one count), offensive behavior in a public place (three counts), and drunken and disorderly conduct (three counts). The prosecution moved and the Kosrae State Court dismissed three counts before trial (two offensive behavior in a public place counts and one drunken and disorderly conduct count). During trial, the court acquitted Jim, on his Rule 29 motion for acquittal, of all remaining counts except the disturbing the peace count. Jim was convicted on that count.

The prosecution appealed the offensive behavior in a public place and the two drunken and disorderly conduct acquittals. It has filed its opening brief. It asserts that Jim's actions did violate the offensive behavior in a public place and drunken and disorderly conduct statutes. The prosecution contends that the trial court engrafted new elements and omitted prerequisite elements of those offenses, and thus, in effect, held those two criminal statutes invalid. The prosecution contends that we have jurisdiction to hear this appeal because the prosecution is permitted to appeal in a criminal case "when the Court has held a law or regulation invalid." Kos. S.C. § 6.404(5).

II.

Motions, even motions to dismiss an appeal, may be decided without oral argument, e.g., Smith v. Nimea, 16 FSM Intrm. 346, 348 (App. 2009); Palsis v. Tafunsak Mun. Gov't, 16 FSM Intrm. 116, 127 (App. 2008), Heirs of George v. Heirs of Dizon, 16 FSM Intrm. 100, 111 (App. 2008); Kosrae v. Jim, 17 FSM Intrm. 97, 98 (App. 2010).

Langu, 16 FSM Intrm. 83, 86 (App. 2008); Christian v. Urusemal, 14 FSM Intrm. 291, 293 (App. 2006), especially when, as in this appeal, no opposition has been filed.

The prosecution's position in this appeal is virtually identical to the prosecution's position in Kosrae v. Benjamin, 17 FSM Intrm. 1 (App. 2010). In Benjamin, the defendant was charged with assault and battery, disturbing the peace, assault, and misconduct in public office, and was acquitted at trial after a Rule 29 motion. *Id.* at 2-3. The prosecution then appealed contending that the Kosrae State Court had misinterpreted the statutory criminal offenses of assault and of assault and battery by, in its view, engrafting new elements to the offenses and omitting other requisite elements, and thereby invalidated those statutes. We held that we had no jurisdiction to reverse a not guilty finding and to either order a guilty finding entered (barred by statute, Kos. S.C. § 6.403(3)), or to order a new trial (barred by constitutional protections against double jeopardy, FSM Const. art. IV, § 7; Kos. Const. art. II, § 1(f)), and that any appeal that sought only an order instructing the trial court in the proper interpretation of a criminal statute would be a moot appeal seeking an advisory opinion and that we do not have jurisdiction to issue advisory opinions or decide moot appeals. Benjamin, 17 FSM Intrm. at 3-4.

This appeal is no different. We have no jurisdiction to reverse a not guilty finding and to either order a guilty finding entered or to order a new trial and we have no jurisdiction to render an advisory opinion on statutory construction or to decide a moot appeal. Accordingly, the appellee's motion is granted and this appeal is dismissed.

* * * *