

FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA,	)	CRIMINAL CASE NO. 2009-500
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
PERSUS ANDRFW,	)	
	)	
Defendant.	)	
_____	)	

ORDER

Dennis K. Yamase  
Associate Justice

Hearing: May 18, 2010  
Decided: August 9, 2010

APPEARANCES:

For the Plaintiff: Daniel J. Rescue, Jr., Esq.  
FSM Assistant Attorney General  
P.O. Box PS-105  
Palikir, Pohnpei FM 96941

For the Defendant: Harry A. Seymour, Esq.  
Office of the Public Defender  
P.O. Box 245  
Tofol, Kosrae FM 96944

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HEADNOTES

Constitutional Law – Due Process

The fundamental concept of procedural due process is that the government may not strip citizens of life, liberty, or property in an unfair, arbitrary manner. When such important individual rights are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision-making process. FSM v. Andrew, 17 FSM Intrm. 213, 215 (Pon. 2010).

Criminal Law and Procedure – Arrest and Custody

In criminal cases, pretrial detainees are entitled to such procedures as, the right to receive notice of the charges against them, an opportunity to respond to those charges before or during confinement, and the right to be brought before the court within 24 hours of arrest. FSM v. Andrew, 17 FSM Intrm. 213, 215 (Pon. 2010).

Constitutional Law – Due Process; Criminal Law and Procedure – Escape

When a defendant has submitted no evidence showing that the government's failure to inform him of the state correctional facility's rules, procedures, and schedules unconstitutionally deprived him of a life, liberty, or property interest and when, since such an admonition is unnecessary, the "Prisoner Rights and Responsibilities" document which the defendant cites does not inform inmates that they have a responsibility to not commit unlawful acts while incarcerated, the defendant cannot claim that he did not know he was not permitted to leave the correctional facility premises without a court order or police escort while incarcerated and a motion for dismissal on that ground will be denied. FSM v. Andrew, 17 FSM Intrm. 213, 215 (Pon. 2010).

Criminal Law and Procedure – Defenses

Even if a defendant was unaware that escape was unlawful, ignorance of the law is no excuse for unlawful behavior. FSM v. Andrew, 17 FSM Intrm. 213, 215 (Pon. 2010).

Criminal Law and Procedure – Insanity; Evidence – Burden of Proof

The mental disease, disorder or defect defense established by 11 F.S.M.C. 302 is an affirmative defense. Under 11 F.S.M.C. 302(3), the party asserting this defense has the burden of proving the existence of the physical or mental disease, disorder, or defect by clear and convincing evidence. FSM v. Andrew, 17 FSM Intrm. 213, 216 (Pon. 2010).

Criminal Law and Procedure – Insanity

The statute requires that if a defendant is acquitted on the grounds of physical or mental disease, disorder, or defect excluding responsibility, the verdict and the judgment must so state. FSM v. Andrew, 17 FSM Intrm. 213, 216 (Pon. 2010).

Criminal Law and Procedure – Insanity

When an adjudication on the merits has not yet occurred and the case is still in the pretrial stage, a defendant's motion for acquittal on insanity grounds is premature and will be denied without prejudice since the FSM Code requires that, if a defendant is acquitted on the grounds of physical or mental disorder, the verdict and judgment must so state and since the court cannot issue a verdict and judgment until after a trial on the merits, during which the prosecution must prove beyond a reasonable doubt all elements including intent. FSM v. Andrew, 17 FSM Intrm. 213, 216 (Pon. 2010).

Criminal Law and Procedure – Insanity

If, at trial, the government proves all elements of an offense, including intent, beyond a reasonable doubt, the defendant is entitled to raise the issue of his mental condition as an affirmative defense. FSM v. Andrew, 17 FSM Intrm. 213, 216 (Pon. 2010).

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COURT'S OPINION

DENNIS K. YAMASE, Associate Justice:

On April 23, 2010, Defendant Persus Andrew filed his motions for dismissal and acquittal in this matter. Plaintiff Federated States of Micronesia filed its response on May 5, 2010. The court held a hearing on the Defendant's motions on May 18, 2010, at 9:30 a.m. at the FSM Supreme Court in Palikir. Assistant Attorney General Daniel Rescue, Jr. appeared on behalf of the FSM Government. Harry Seymour, Esq. of the FSM Public Defender's Office appeared on behalf of Defendant Persus Andrew. Defendant Persus Andrew was also present.

Defendant presents two issues for the court's consideration in his motions for dismissal and acquittal. First, Defendant asks that the case be dismissed on the grounds that Pohnpei State Correctional Facility, where Defendant is currently incarcerated due to the revocation of his probation in Crim. No. 2009-01, violated his right to procedural due process by failing to inform him of the rules, procedures, and schedules of the institution. Second, Defendant requests that he be acquitted on the grounds that he lacked criminal responsibility at the time of his alleged escape.

#### I. MOTION TO DISMISS

Defendant asks the court to dismiss the escape charges pending against him on the basis that his procedural due process rights were violated. Defendant claims that the Pohnpei State Correctional Facility failed to inform him of the rules, procedures, and schedules of the institution as required by the "Prisoner Rights and Responsibilities" document adopted by the State of Pohnpei on May 27, 1992. Def. Mot. Dismiss at 3.

Defendant argues that because the government did not provide Defendant with knowledge of the correctional facility's rules and procedures, the government cannot claim that Defendant unlawfully removed himself from official detention. *Id.*

The fundamental concept of procedural due process is that the government may not strip citizens of life, liberty or property in an unfair, arbitrary manner. Suldan v. FSM (II), 1 FSM Intrm. 339, 354-55 (Pon. 1983). Where such important individual rights are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision-making process. *Id.*

In criminal cases, pretrial detainees are entitled to such procedures as, the right to receive notice of the charges against them, an opportunity to respond to those charges before or during confinement, and the right to be brought before the court within 24 hours of arrest. See Plais v. Panuelo, 5 FSM Intrm. 179, 212 (Pon. 1991) (pretrial detainee's rights to procedural due process are violated when he does not receive notice of the charges against him or an opportunity to respond to the charges before or during confinement); Warren v. Pohnpei State Dep't of Public Safety, 13 FSM Intrm. 483, 499 (Pon. 2005) (defendant has a statutory right to be brought before the court within 24 hours of his arrest).

The record shows that Defendant has submitted no evidence showing that the government's failure to inform him of the rules, procedures, and schedules regarding the operation of the Pohnpei State Correctional Facility unconstitutionally deprived him of a life, liberty, or property interest. The "Prisoner Rights and Responsibilities" document to which Defendant cites does not inform inmates that they have a responsibility to not commit unlawful acts while incarcerated. Such an admonition is unnecessary. Defendant cannot claim that he did not know he was not permitted to leave the correctional facility premises without a court order or police escort while incarcerated. Even if he was unaware that escape was unlawful, ignorance of the law is no excuse for unlawful behavior. See FSM v. Petewon, 14 FSM Intrm. 320, 325 (Chk. 2006).

There is no evidence in the record that Defendant was stripped of life, liberty, or property in an unfair or arbitrary manner following his arrest for allegedly committing the criminal act of escape. Accordingly, Defendant's motion to dismiss is DENIED.

#### II. MOTION FOR ACQUITTAL

Defendant contends that he should be acquitted because he lacked criminal responsibility at the time of his alleged escape. In support, Defendant cites to 11 F.S.M.C. 302(1), which states: "No

person shall be convicted, sentenced, or otherwise punished for any crime committed while suffering from a physical or mental disease, disorder or defect such that the disease, disorder or defect prevented that person from knowing the nature of the criminal act or that it was wrong." *Id.* The mental disease, disorder or defect defense established by 11 F.S.M.C. 302 is an affirmative defense. Runmar v. FSM, 3 FSM Intrm. 308, 312 (App. 1988). Pursuant to 11 F.S.M.C. 302(3), the party asserting this defense has the burden of proving the existence of the physical or mental disease, disorder, or defect by clear and convincing evidence. *Id.* The statutes also require that when the defendant is acquitted on the grounds of physical or mental disease, disorder, or defect excluding responsibility, the verdict and the judgment shall so state. 11 F.S.M.C. 302(4).

The Kosrae State Court considered a similar pretrial motion made by a criminal defendant in Kosrae v. Charley, 14 FSM Intrm. 470 (Kos. S. Ct. Tr. 2006). In that case, the defendant filed a motion to dismiss on the grounds that he "lacked substantial capacity to appreciate the wrongfulness of his conduct or to control his impulse to commit it." *Id.* at 471. The Kosrae State Code contains a provision identical to that of 11 F.S.M.C. 302(4).<sup>1</sup> The Charley court examined this Kosrae Code language and found that the use of the phrase "verdict and judgment" in the Kosrae State Code indicated that an acquittal based on this defense can be made only following a trial.

The Kosrae State Court then looked to the FSM Supreme Court case Runmar v. FSM, 3 FSM Intrm. 308 (App. 1988) for guidance. In Runmar, the FSM Supreme Court formally recognized a relationship between the element of intent and an affirmative defense based on a lack of mental capacity. *Id.* at 312. Based on the Runmar court's reasoning, the Charley court held that the need for an affirmative defense based on a defendant's mental condition arises only if the state proves all elements, including intent, beyond a reasonable doubt. Charley, 14 FSM Intrm. at 472. The Kosrae State Court then denied the defendant's pretrial motion to dismiss on the grounds that it had been raised prematurely. *Id.*

This Court finds that the Plaintiff in this case has framed his motion to dismiss in a similar way as that done in the Charley case and finds the reasoning in Charley to be persuasive. As with the Kosrae State Code language applicable in Charley, the FSM Code requires that if a defendant is acquitted on the grounds of physical or mental disorder, "the verdict and judgment shall so state." 11 F.S.M.C. 302(4). The Court cannot issue a verdict and judgment until a trial on the merits is held, during which the prosecution must prove all elements, including intent, beyond a reasonable doubt. 11 F.S.M.C. 107(2)(a). An adjudication on the merits has not yet occurred in this case.

Since this case is still in the pretrial stage, the court finds that Defendant's motion for acquittal is premature. The government has not yet proved all elements of the offense, including intent, beyond a reasonable doubt. If the government does so, Defendant is entitled to raise the issue of Defendant's mental condition as an affirmative defense at trial. Accordingly, Defendant's motion for acquittal is DENIED without prejudice.

### III. CONCLUSION

Defendant's motions are denied. The parties in this matter shall confer and agree to three alternative trial dates after January 1, 2011 and submit this to the court by September 15, 2010.

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<sup>1</sup> The applicable section of the Kosrae State Code states, "When the defendant is acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility, the verdict and judgment shall so state." Kos. S. C. § 13.104(2)(c).