

CHUUK STATE SUPREME COURT TRIAL DIVISION

CHUUK STATE,	)	CSSC CR NO. 151-2007
	)	
Plaintiff,	)	
vs.	)	
	)	
FRANCIS CHOPWA,	)	
	)	
Defendant.	)	
_____	)	

ORDER

Camillo Noket  
Chief Justice

Decided: May 16, 2013

APPEARANCE:

For the Plaintiff: Jayson Robert  
Deputy Attorney General  
Office of the Chuuk Attorney General  
P.O. Box 1050  
Weno, Chuuk FM 96942

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HEADNOTES

Criminal Law and Procedure – Speedy Trial

The four-factor balancing test for determining speedy trial violations is: 1) length of delay; 2) the reason for the delay; 3) the defendant's assertion of his right; and 4) prejudice to the defendant, and it is also an appropriate tool to use in analyzing a Rule 48(b) dismissal. Chuuk v. Chopwa, 19 FSM R. 28, 31 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

Whether there has been a lengthy delay, is a triggering mechanism for further analysis to determine if a defendant's right to a speedy trial has been violated. Since a delay of one year is presumptively prejudicial and triggers application of the three remaining factors, those factors will be considered when the case has been pending since November 2007. Chuuk v. Chopwa, 19 FSM R. 28, 31 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

A valid reason should serve to justify appropriate delay. Chuuk v. Chopwa, 19 FSM R. 28, 31 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

The Chuuk State Supreme Court has the authority to dismiss a case sua sponte. This is a necessary corollary of the judge's authority to process criminal cases. Cases that have remained

dormant due to inaction and that meet the standard for dismissal, may be dismissed. Chuuk v. Chopwa, 19 FSM R. 28, 31 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

When the prosecution states that the court is to blame for the delay and that the case has been waiting scheduling and when, assuming that this assertion is correct and that the sole reason for the delay was a result of the crowded courts, such will still go against the government, but less heavily. Chuuk v. Chopwa, 19 FSM R. 28, 31 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

When the record demonstrates that neither the court nor the defendant were the cause for the delay and when the prosecution has provided no supporting evidence for the proposition that the court was to blame for the delay, the prosecution simply failed to move the case forward. This is not a demonstration of good cause as required. Otherwise, as long as the court schedules trials and other hearings, the prosecution and/or the court would be free to subsequently delay a trial as long as they wished for any reason. Common sense dictates that the reason or reasons for all trial delays must have the requisite good cause existing for the delay in ultimately bringing a defendant to trial. Chuuk v. Chopwa, 19 FSM R. 28, 31 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Dismissal; Criminal Law and Procedure – Speedy Trial

The dismissal of a 2007 case is more than a mere attempt to enforce a scheduling order or to "clean up the docket" when it can reasonably be inferred from the lack of activity on the record that the prosecution had been deliberately proceeding in dilatory fashion. Chuuk v. Chopwa, 19 FSM R. 28, 31-32 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

Dismissal without prejudice is a relatively lenient penalty for the state's utter failure to prosecute an action, for a dismissal without prejudice does not, in theory, irrevocably deprive the state of its day in court. Chuuk v. Chopwa, 19 FSM R. 28, 32 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

For speedy trial or unnecessary delay purposes, the defendant's demand for a prompt trial will always weigh heavily in his favor, while a failure to assert the right will make it difficult for him to prove that he was denied it. But since non-assertion of the right does not constitute waiver of the speedy trial right, a court can consider whether the right was asserted, and how vigorously, in determining the reasonableness of any delay. Chuuk v. Chopwa, 19 FSM R. 28, 32 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

A defendant's failure to demand a speedy trial will weigh in favor of the prosecution. Chuuk v. Chopwa, 19 FSM R. 28, 32 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

Prejudice to an accused may consist of: 1) oppressive pretrial incarceration; 2) the accused's pretrial anxiety; and 3) impairment of the defense. Of these, the most serious is the last because the possibility that an accused may not be able to adequately prepare his defense skews the fairness of the entire system. Pretrial anxiety is the least significant factor, and, because a certain amount of pretrial anxiety naturally exists, the accused must demonstrate that he suffered extraordinary or unusual pretrial anxiety. Chuuk v. Chopwa, 19 FSM R. 28, 32 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

When the pre-trial release conditions imposed on the defendant restrict his ability to travel

outside of the State of Chuuk and when this restriction of movement will be analogous to an incarceration within the state since FSM citizens are afforded a constitutional right to travel, it will weigh in favor of the pretrial incarceration, though much less than actual oppressive incarceration. Chuuk v. Chopwa, 19 FSM R. 28, 32 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

When fifty-five months elapsed between the filing of the action and the order for dismissal and in that time, the prosecution failed to file anything to move the case forward and when the case languished in the courts for several years with the inactivity prompting the court to place it on the dismissal list, the appearance docket reveals scant effort to prosecute the case. The primary responsibility for prosecuting a case lies with the plaintiff. When a case has not been prosecuted in a diligent manner, prejudice is generally presumed because a case left to languish in the system, with little to no activity, will eventually erode the defendant's ability to prepare a defense. Chuuk v. Chopwa, 19 FSM R. 28, 32-33 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Dismissal; Criminal Law and Procedure – Speedy Trial

When the four speedy trial factors, on balance, show that the defendant has suffered a violation of his right to a speedy trial because the record does not support any legitimate reasons for the delay, because an excessive length of time that has passed coupled with the absolute lack of diligence on the prosecution's part are sufficient to assume prejudice; when the delays were a direct result of the state failing to diligently prosecute the case, the case will be dismissed. Chuuk v. Chopwa, 19 FSM R. 28, 33 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

Brief periods of inactivity in an otherwise active prosecution are acceptable. Chuuk v. Chopwa, 19 FSM R. 28, 33 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Dismissal; Criminal Law and Procedure – Speedy Trial

The better procedure is for the prosecution to insist on its need to have its day in court by filing a motion for reassignment, requesting a status conference, or scheduling of the case before a dismissal. Something more than nothing would be a necessary action to avoid dismissal. Chuuk v. Chopwa, 19 FSM R. 28, 33 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

Only rarely would the prosecution's failure to file anything for several years be appropriate. Chuuk v. Chopwa, 19 FSM R. 28, 33 (Chk. S. Ct. Tr. 2013).

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COURT'S OPINION

CAMILLO NOKET, Chief Justice:

I. BACKGROUND

A criminal information was filed on November 27, 2007, charging Defendant Francis Chopwa with one count of Aggravated Assault in violation of Chk. S.L. No. 191-26, § 1(417); one count of Assault with Dangerous Weapon in violation of Chk. S.L. No. 6-66, § 407; and four counts of Malicious Mischief in violation of Chk. S.L. No. 6-66, § 506.

On December 14, 2007, Associate Justice Machime O'Sonis signed an Order for Release from

Custody with Conditions, and set trial for January 16, 2008.

Defendant filed a Request for Discovery on February 13, 2008, with Plaintiff filing an answer on February 19, 2008. Since the filing of said answer, no further actions have been taken by Plaintiff. On June 26, 2012, an order dismissing the instant case without prejudice pursuant to Rule 48(b) was entered. A motion to set aside was filed by the Plaintiff on July 20, 2012.

## II. STANDARD OF REVIEW

A four-factor balancing test for determining speedy trial violations: (1) length of delay; (2) the reason for the delay; (3) the defendant's assertion of his right, and (4) prejudice to the defendant is also an appropriate tool to use in analyzing a Rule 48(b) dismissal. FSM v. Wainit, 12 FSM Intrm. 405, 410 (Chk. 2004).

## III. LEGAL ANALYSIS

### *Length of Delay*

The first factor, whether there has been a lengthy delay, is a triggering mechanism for further analysis to determine if a defendant's right to a speedy trial has been violated. A delay of one year is presumptively prejudicial and triggers application of the three remaining factors. Chuuk v. William, 15 FSM Intrm. 381, 386 (Chk. S. Ct. Tr. 2007).

The instant case has been pending since November 27, 2007, therefore the remaining factors are triggered.

### *Reason for the Delay*

A valid reason should serve to justify appropriate delay. William, 15 FSM Intrm. at 388. The Court takes this occasion to note that this court has the authority to dismiss a case sua sponte. This is a necessary corollary of the judge's authority to process criminal cases. Cases that have remained dormant due to inaction, and meet the standard for dismissal, may be dismissed. The plaintiff now seeks to avoid the unfortunate consequences arguing that dismissal was improper because he was not responsible for the delays and dilatory conduct.

The order dismissing the instant case, allowed for the Plaintiff to show good cause as to why this action should not be dismissed for lack of prosecution. Plaintiff filed a timely response; however, the response is void of any demonstration of good cause as to why the Plaintiff has failed to prosecute this case. Plaintiff states that the Court is to blame for the delay, and that the case has been waiting scheduling. Assuming that Plaintiff's assertion is correct and that the sole reason for the delay was a result of the crowded courts, such will still go against the government, but less heavily. Further, the record demonstrates that neither the Court nor the Defendant were the cause for the delay. The premise of the Plaintiff's argument—that the case has been waiting scheduling—is flawed. Not only has the Plaintiff provided no supporting evidence for this proposition, if the Court were to adopt such an approach, as long as the court schedules trials and other hearings, a plaintiff and/or court would be free to subsequently delay a trial as long as they wished for any reason. Common sense dictates that the reason or reasons for all trial delays must have the requisite good cause existing for the delay in ultimately bringing a defendant to trial. Plaintiff's counsel simply failed to move the case forward, and this is not a demonstration of good cause as required by the Chuuk State Court.

This dismissal is more than a mere attempt to enforce a scheduling order or to "clean up the

docket." It can reasonably be inferred from the lack of activity on the record, that Plaintiff had been deliberately proceeding in dilatory fashion.

Dismissal without prejudice is a relatively lenient penalty for Plaintiff's utter failure to prosecute this action, for the dismissal without prejudice does not, in theory, irrevocably deprive Plaintiff of its day in court.

The reasoning for the delay will be weigh against the Plaintiff therefore, this prong has been met.

*Defendant's Assertion of His Right*

For speedy trial or unnecessary delay purposes, the defendant's demand for a prompt trial will always weigh heavily in his favor, while a failure to assert the right will make it difficult for him to prove that he was denied it. See Pohnpei v. Weilbacher, 5 FSM Intrm. 431, 443 (Pon. S. Ct. Tr. 1992) (following Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972)). Although non-assertion of the right does not constitute waiver of the speedy trial right, a court can consider whether the right was asserted, and how vigorously, in determining the reasonableness of any delay. FSM v. Kansou, 15 FSM Intrm. 180, 185 (Chk. 2007).

In the instant case, the Defendant failed to object to any delay either on the basis that they were unnecessary or that they violated the Defendant's right to a speedy trial.

Due to Defendant's failure to demand a speedy trial, this factor will weigh in favor of the Plaintiff.

*Prejudice to the Defendant*

Prejudice to an accused may consist of: (1) oppressive pretrial incarceration; (2) the accused's pretrial anxiety; and (3) impairment of the defense. Of these, the most serious is the last because the possibility that an accused may not be able to adequately prepare his defense skews the fairness of the entire system. Pretrial anxiety is the least significant factor, and, because a certain amount of pretrial anxiety naturally exists, the accused must demonstrate that he suffered extraordinary or unusual pretrial anxiety. William, 15 FSM Intrm. at 389.

- (1) The record demonstrates that the Defendant is not currently incarcerated, however, the pre-trial release conditions imposed on the Defendant restrict his ability to travel outside of the State of Chuuk. FSM citizens are afforded a Constitutional right to travel. This restriction of movement will be analogous to an incarceration within the State and will weigh in favor of the pretrial incarceration, though much less than actual oppressive incarceration.
- (2) Pretrial anxiety of insurmountable/extraordinary measures has not been demonstrated in this case, therefore this prong weighs in favor of the Plaintiff.
- (3) Plaintiff contends that a dismissal was not appropriate because no prejudice had been demonstrated; however, fifty-five months elapsed between the filing of the action and the order for dismissal. In that time, Plaintiff failed to file anything to move the case forward. The case languished in the courts for several years with the inactivity prompting the court to place it on the dismissal list. Simply put, the appearance docket reveals scant effort by Plaintiff's Counsel to prosecute this case.

The primary responsibility for prosecuting a case lies with the plaintiff. When a case has not

been prosecuted in a diligent manner, prejudice is generally presumed. Even though the Defendant did not claim any prejudice, the Court identifies that the record supports a claim of prejudice and further, A case left to languish in the system, with little to no activity will eventually erode the ability of the Defendant to prepare a defense.

Since the Defendant would suffer a demonstrable prejudice or threat of prejudice from the excessive delay in Plaintiff's bringing this case to trial, this prong of the analysis has been met.

#### IV. CONCLUSION

Taking a look at the Plaintiff's processing of this case prior to the dismissal, the four speedy trial factors, on balance, show that the Defendant has suffered a violation of his right to a speedy trial. The record does not support any legitimate reasons for the delay, and the excessive length of time that has passed coupled with the absolute lack of diligence on the part of the Plaintiff are sufficient to assume prejudice. The record does show that the delays were a direct result of the Plaintiff failing to diligently prosecute the case. Brief periods of inactivity in an otherwise active prosecution are acceptable, however this was not the case in this instance and the Court is unwilling to encourage this behavior by the Plaintiff. The better procedure is for the Plaintiff to insist on its need to have its day in court by filing a motion for reassignment, requesting a status conference, or scheduling of the case prior to a dismissal. Something more than nothing would be a necessary action. Only rarely would a failure to file anything for several years be appropriate.

WHEREFORE, it is hereby ORDERED that this action is DISMISSED without prejudice for lack of prosecution. All scheduled dates in this matter are VACATED, and all pending motions are TERMINATED.

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#### CHUUK STATE SUPREME COURT TRIAL DIVISION

CHUUK STATE,	)	CSSC CR. NO. 097-2012
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
JIMMY EMILIO and DAMIAN JOHN,	)	
	)	
Defendants.	)	
	)	

#### ORDER

Midasy O. Aisek  
Associate Justice

Hearing: January 8, 2013  
Decided: May 17, 2013