

- 6. The deposition must be recorded and said recording must include both clear audio and clear visual recordings of the deposition in its entirety.
- 7. Someone authorized to give oaths in the jurisdiction must swear in witness.
- 8. Upon culmination of the deposition, the Plaintiff must notify the Court to allow for future scheduling of the case.

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CHUUK STATE SUPREME COURT TRIAL DIVISION

CHUUK STATE,	)	CSSC CR NO. 049-2003
	)	
Plaintiff,	)	
vs.	)	
	)	
LIGHTARO NOBORU and KERESSEN NOBORU,	)	
	)	
Defendants.	)	
_____	)	

ORDER

Camillo Noket  
Chief Justice

Decided: May 17, 2013

APPEARANCES:

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

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

The 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. Chuuk v. Noboru, 19 FSM R. 38, 41 (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 when the case has been pending since September 2, 2003, the remaining factors are triggered. Chuuk v. Noboru, 19 FSM R. 38, 41 (Chk. S. Ct. Tr. 2013).

#### Criminal Law and Procedure – Speedy Trial

A valid reason should serve to justify appropriate delay. Chuuk v. Noboru, 19 FSM R. 38, 41 (Chk. S. Ct. Tr. 2013).

#### Criminal Law and Procedure – Dismissal

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 meet the standard for dismissal, may be dismissed. Chuuk v. Noboru, 19 FSM R. 38, 41 (Chk. S. Ct. Tr. 2013).

#### Criminal Law and Procedure – Speedy Trial

Assuming that the sole reason for the delay was a result of the crowded courts, such will still go against the government, but less heavily. But when the record demonstrates that the prosecution requested a dismissal, the premise of the prosecution's argument—that the case has been waiting scheduling—is flawed. Chuuk v. Noboru, 19 FSM R. 38, 41 (Chk. S. Ct. Tr. 2013).

#### Criminal Law and Procedure – Speedy Trial

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. Noboru, 19 FSM R. 38, 41 (Chk. S. Ct. Tr. 2013).

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

When the prosecution simply failed to move the case forward, a dismissal 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. Noboru, 19 FSM R. 38, 41 (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 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. Noboru, 19 FSM R. 38, 42 (Chk. S. Ct. Tr. 2013).

#### Criminal Law and Procedure – Speedy Trial

When a defendant failed to object to any delay either on the basis that it was unnecessary or that it violated the defendant's right to a speedy trial, this factor will weigh in the prosecution's favor. Chuuk v. Noboru, 19 FSM R. 38, 42 (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, and 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. Noboru, 19 FSM R. 38, 42 (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 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 a pretrial incarceration, though much less than actual oppressive incarceration. Chuuk v. Noboru, 19 FSM R. 38, 42 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

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. Noboru, 19 FSM R. 38, 42 (Chk. S. Ct. Tr. 2013).

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

The court is not merely interested in "cleaning house" and dismissal is appropriate when the defendant would suffer a demonstrable prejudice or threat of prejudice from the excessive delay in the prosecution's bringing this case to trial because the case has been pending for over nine years and contains a stipulated dismissal from 2003, signed by both parties, which demonstrates the prosecution's desire to abandon the case rather than continue to prosecute, and because the prosecution has taken no action in the case since the stipulated motion's filing. Chuuk v. Noboru, 19 FSM R. 38, 42-43 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Speedy Trial

Brief periods of inactivity in an otherwise active prosecution are acceptable. Chuuk v. Noboru, 19 FSM R. 38, 43 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Dismissal

When the record shows that the delays were a direct result of the prosecution failing to diligently prosecute the case; when the court is unwilling to encourage this behavior by the prosecution; and when something more than nothing would be a necessary action, the action will be dismissed without prejudice for lack of prosecution. Chuuk v. Noboru, 19 FSM R. 38, 43 (Chk. S. Ct. Tr. 2013).

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COURT'S OPINION

CAMILLO NOKET, Chief Justice:

I. BACKGROUND

A criminal information was filed on September 2, 2003, charging Defendants Lightaro Noboru and Keresen Noboru with one count of Cheating in violation of Section 510 of Chk. S.L. No. 6-66. An arrest warrant was issued on the same day.

On September 30, 2003, Defendants requested discovery, which Plaintiff responded to. On October 29, 2003, a Stipulated Motion to Dismiss was filed, citing no reason for the dismissal. This motion was never ruled on. On June 20, 2012, Plaintiff filed a Motion to Dismiss the instant case citing Rule 48(b) of the Chuuk State Rules of Criminal Procedure. Plaintiff requested that the case be dismissed with prejudice, for the Plaintiff's own failure to prosecute.

On June 26, 2012, the Court dismissed the instant case without prejudice, pursuant to Rule 48(b) of the Chuuk State Rules of Criminal Procedure. Plaintiff filed a motion to set aside Court's Order of Dismissal on August 3, 2012, 38 days after the dismissal by the Court.

## 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 September 2, 2003, 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 it 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 failed to file a timely response, and 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 Plaintiff requested a dismissal. 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.

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. Chuuk v. William, 15 FSM Intrm. 381, 389 (Chk. S. Ct. Tr. 2007).

- (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, a stipulated motion to dismiss was filed demonstrating that the intent of the Plaintiff to dispose of this case.

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.

In the motion to set aside, Plaintiff contends that the Court is merely interested in "cleaning house" and that the dismissal is therefore not appropriate. Plaintiff further argues that the only cases the Government moved to dismiss were misdemeanors over three years old, or felonies with a maximum charge of more than five years and had been pending for over five years.

The Court is not persuaded by the contentions of the Plaintiff. The instant case has been pending for over nine years and contains a stipulated dismissal from 2003, signed by both parties. This stipulated motion to dismiss demonstrates the Plaintiff's desire to abandon the case, rather than

continue to prosecute. Further, the case has had no action by the Plaintiff since the filing of the stipulated motion.

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 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. 068-2008
	)	
Plaintiff,	)	
vs.	)	
	)	
CAR HARUO,	)	
	)	
Defendant.	)	
_____	)	

ORDER

Camillo Noket  
Chief Justice

Decided: May 17, 2013

APPEARANCE:

For the Plaintiff:	Charleston Bravo Assistant Attorney General Office of the Chuuk Attorney General P.O. Box 1050 Weno, Chuuk FM 96942
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