The Land Court is an inferior court within a unified state court system. "The courts of the State constitute a unified judicial system for operation and administration." Kos. Const. art. VI, § 6. The statute authorizes the appointment of a Kosrae State Court justice to be a Land Court judge when all Land Court judges are legally disqualified. The statute is not unconstitutional. There is no constitutional impediment to a Kosrae statute authorizing a Kosrae State Court justice to sit as a temporary justice in another (inferior) court within the unified Kosrae state court system. If the Kosrae Chief Justice sits on a case in the Land Court and his decision is later appealed to the Kosrae State Court, the Chief Justice must then have no involvement in the case in the Kosrae State Court and the Kosrae State Court appeal would necessarily be handled by another justice.

That the Kosrae State Court Chief Justice decided a related case is not a ground to issue a writ of prohibition. Anything he learned during that case did not stem from an extrajudicial source. The general rule is that the disqualifying factors must be from an extrajudicial source, and the normal situation in which a judge's disqualification may be required is when a judge's extrajudicial knowledge, relationship or dealings with a party, or the judge's own personal or financial interests, might be such as to cause a reasonable person to question whether the judge could preside over and decide a particular case impartially. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM Intrm. 1, 7 (App. 1997); In re Main, 4 FSM Intrm. 255, 260 (App. 1990).

## IV. Conclusion

Since there appears to be no legal grounds, let alone a clear duty that the Kosrae Chief Justice not appoint himself a Land Court temporary judge to preside over Land Court Case No. 28-10, we are of the opinion that the writ clearly should not be granted. Accordingly, we deny the petition, FSM App. R. 21(b), and dismiss this case.

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FSM SUPREME COURT TRIAL DIVISION

| | | |
|---|---|---|
| ROCKY INEK, | ) | CIVIL ACTION NO. 2012-1022 |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | |
| | ) | |
| CHUUK STATE, | ) | |
| | ) | |
| Defendant. | ) | |
| | ) | |

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Martin G. Yinug
Chief Justice

Trial: August 5, 2013
Decided: October 17, 2013
Corrected: December 6, 2013

APPEARANCES:

For the Plaintiff: Salomon M. Saimon, Esq.
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HEADNOTES

Civil Procedure – Dismissal – After Plaintiff's Evidence

When a Rule 41(b) motion comes as a part of a closing argument, it comes too late and must be denied because now is the time to decide whether the plaintiff has shown a right to relief. If a plaintiff has truly not shown any right to relief then, after closing arguments, the defendant will be granted judgment in its favor on the merits, not a Rule 41(b) dismissal. Inek v. Chuuk, 19 FSM R. 195, 198 (Chk. 2013).

Evidence – Burden of Proof

When the plaintiff testified that he was uncertain whether he lost any pay because of his absences from work due to the September 8, 2010 and the November 4, 2010 arrests and no other evidence was introduced about his state employee pay or its amount, the court must find as fact that he did not lose any pay as the result of the September 8, and November 4, 2010 arrests and detentions since he had the burden of proof to establish that he lost pay and the amount of that lost pay and he did not meet that burden. Inek v. Chuuk, 19 FSM R. 195, 199 (Chk. 2013).

Criminal Law – Arrest and Custody

The arrest of a prisoner on work release was not unlawful when the police had an eyewitness report that he had violated his work release conditions. The eyewitness report was enough on which to base an arrest of a probationer for a release conditions violation. A later judicial proceeding would determine the report's accuracy or bias. Inek v. Chuuk, 19 FSM R. 195, 199 (Chk. 2013).

Criminal Law – Arrest and Custody; Criminal Law – Sentencing – Probation – Revocation

When the most likely reason for the arrest and later court appearance of a prisoner on work release was not to charge him with a new crime but to revoke or modify his work release conditions, the rule concerning revocation of probation, rather than the statute concerning charging a crime, is the applicable law. Inek v. Chuuk, 19 FSM R. 195, 199 (Chk. 2013).

Criminal Law – Sentencing – Probation – Revocation

When Chuuk seeks to revoke a prisoner's work release for violating a release condition, the revocation hearing, unless waived by the probationer, must be held within a reasonable time, and whenever a probationer is held in custody on the ground that he has violated a condition of his probation, he must be afforded a prompt hearing before a judicial officer to determine whether there is probable cause to hold the probationer for a revocation hearing. Inek v. Chuuk, 19 FSM R. 195, 199 (Chk. 2013).

Criminal Law – Arrest and Custody; Criminal Law – Sentencing – Probation – Revocation

Since a convicted inmate is a probationer only when he is on work release and is otherwise properly in custody, the court must conclude that a preliminary probable cause hearing within 48 hours of the inmate's arrest for violating work release conditions would be prompt within the meaning of Chuuk Criminal Rule 32.1 and that a revocation hearing within 48 hours of the arrest for violation of probation would be within a reasonable time. Chuuk therefore cannot be held civilly liable for the arrestee detention from September 8, 2010 to September 10, 2010, of a prisoner arrested for a work release violation. Inek v. Chuuk, 19 FSM R. 195, 199 (Chk. 2013).

Criminal Law – Sentencing – Probation – Revocation

Since Chuuk Criminal Procedure Rule 32.1 provides that the person whose release Chuuk is trying to revoke be given written notice of the alleged probation violation and informed of the evidence against him and given an opportunity to appear and to present evidence and to question adverse witnesses and be represented by counsel, when, other than counsel at the hearing, the plaintiff was not given any of these Rule 32.1 procedural rights his remedy for that failure would be a denial of Chuuk's attempt to revoke his work release. Inek v. Chuuk, 19 FSM R. 195, 199-200 (Chk. 2013).

Criminal Law – Arrest and Custody; Criminal Law – Sentencing – Probation – Revocation

Once a prisoner arrested for a work release violation has been detained in the arrestee holding area past 72 hours without being charged with work release violations under Chuuk Criminal Procedure Rule 32.1, his continued detention there becomes unlawful. Inek v. Chuuk, 19 FSM R. 195, 200 (Chk. 2013).

Criminal Law – Cruel and Unusual Punishment

When no evidence was introduced about what would constitute constitutionally acceptable jail conditions in the FSM and in Chuuk and since little evidence was introduced about the actual conditions when the plaintiff was there, there is insufficient evidence for the court to conclude that the general Chuuk jail conditions constituted cruel and unusual punishment for the convicted prisoners. Inek v. Chuuk, 19 FSM R. 195, 200 (Chk. 2013).

Attorney's Fees – Court-Awarded; Civil Rights; Criminal Law – Arrest and Custody

When an unlawful detention was a violation of the plaintiff's right to due process, it was a civil rights violation, which under 11 F.S.M.C. 701(3) entitles him to reasonable attorney's fees and costs. Inek v. Chuuk, 19 FSM R. 195, 200 (Chk. 2013).

* * * *

## COURT'S OPINION

MARTIN G. YINUG, Chief Justice:

This case was tried on August 5, 2013. Plaintiff Rocky Inek, Kency Conrad, Charleston Bravo, Damian John, and Santer Inek testified. Each side filed a written closing argument on August 7, 2013. The court then considered the case submitted for its decision.

### RULE 41(B) MOTION

Chuuk's written closing included a Rule 41(b) motion to dismiss. Chuuk contends that it is entitled to a dismissal because Rocky Inek has not shown any right to relief. A Rule 41(b) motion may be made after the plaintiff has finished presenting his case-in-chief and before the defendant has taken its turn to present its case. Here, Chuuk took its turn and then rested its case without calling any

witnesses of its own.

Since the motion comes as a part of a closing argument, it comes too late and must be denied because now is the time to decide whether the plaintiff has shown a right to relief. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM Intrm. 111, 117 (App. 2011) (a Rule 41(b) motion to dismiss during closing arguments is pointless since once the parties have finished their presentations, the trial court's duty is to weigh the evidence and make its findings of fact and conclusions of law), *aff'g* Actouka Executive Ins. Underwriters v. Simina, 15 FSM Intrm. 642, 656 (Pon. 2008) (Rule 41(b) motion to dismiss will be denied when the defendant did not make it at the end of the plaintiff's case, but instead incorporated it in its written closing argument submitted after trial). If a plaintiff has truly not shown any right to relief then, after closing arguments, the defendant will be granted judgment in its favor on the merits, not a Rule 41(b) dismissal. Chuuk's motion to dismiss is therefore denied as made too late. The court will proceed on to a decision on the case's merits.

Based on the witnesses' testimony, the admitted evidence, and the parties' post-trial submissions on legal matters, the court makes the following

## FINDINGS OF FACT.

Rocky Inek was convicted in Chuuk State Supreme Court of one count of sexual abuse. He was sentenced, starting June 5, 2010, to a three-year (the last two years suspended) term of imprisonment in the Chuuk state jail with work release at 7:00 a.m. on work days, to attend to his duties as a state government employee. He was ordered to travel from jail to his work station by the most direct (shortest) route and remain there until the end of his work day when he had to return to jail by the most direct route by 5:00 p.m. On weekends and holidays Rocky Inek was required to remain in jail.

On September 8, 2010, Santer Inek, Rocky Inek's next door neighbor in Nantaku and the father of Rocky Inek's victim, reported to police officer Damian John that he had seen Rocky Inek outside his house some day earlier when Rocky should have either been at work or in jail. He signed a written statement to that effect on September 9, 2010. Officer Damian John had also seen Rocky Inek outside his house. Santer Inek and Damian John are both related to Rocky Inek.

When Rocky Inek returned to jail on September 8, 2010, he was arrested and placed in the arrestee-detainee holding cell instead of being returned to his regular cell. He was not told the specific reason for his arrest. The arrestee-detainee holding area is more unsanitary and less livable than the cells where the regular convict population is housed. It is Department of Public Safety policy that whenever a prisoner violates his work release conditions he is arrested and put in with the arrestees.

On September 10, 2010, Rocky Inek was taken before the Chuuk State Supreme Court Chief Justice for an arraignment or a revocation (of his work release) hearing. He was represented by counsel. Since no charging document had been filed (that is, no information alleging a criminal offense or a probation officer's report alleging a violation of release conditions), the judge released Rocky Inek and he was returned to his regular cell among the general convict population. He returned to his regular work release schedule after that.

On November 4, 2010, the police arrested Rocky Inek at 10:00 a.m. while he was at work and took him back to jail. From November 4 through November 12, 2010, Rocky Inek was in the arrestee holding cell. From November 12 through November 16, 2010, he was back in his regular cell with his cellmates but was not allowed work release. He returned to work on November 17, 2010. He finished his jail term in June 2011.

Rocky Inek testified that he was uncertain whether he lost any pay because of his absences from work due to the September 8, 2010 and the November 4, 2010 arrests. No other evidence was introduced about his state employee pay or its amount. Rocky Inek had the burden of proof to establish that he lost pay and what the amount of that lost pay was. Since he did not meet that burden, the court must find as fact that Rocky Inek did not lose any pay as the result of the September 8, and November 4, 2010 arrests and detentions.

Based on these findings of fact, the court makes the following

CONCLUSIONS OF LAW.

Rocky Inek contends that he was unlawfully arrested and held with the arrestees and detainees because he was not taken before a judge within 24 hours of his arrest on September 8, 2010. The arrest was not unlawful. The police had an eyewitness report that Rocky Inek had violated his work release conditions. While Rocky Inek suggests that the report was inaccurate and the eyewitnesses were biased against him and therefore his arrest must be unlawful, the eyewitness report was enough on which to base an arrest of a probationer for a release conditions violation. A later judicial proceeding would have to determine the report's accuracy or bias.

Rocky Inek further contends that he was detained in the arrestees' holding area too long. He relies on the statute that makes it "unlawful . . . to fail either to release or charge such arrested person with a criminal offense within a reasonable time, which under no circumstances shall exceed twenty-four hours." 12 TTC 68(c).[1]

Rocky Inek was brought before a judge on September 10, 2010 – more than 24 hours after his arrest. The most likely reason for Rocky Inek's arrest and later court appearance was not to charge him with a new crime but to revoke or modify his work release conditions, especially since, if the allegation were true, it is not apparent what crime in the Chuuk Criminal Code, Rocky Inek could have been charged with violating. The rule concerning revocation of probation, rather than the statute concerning charging a crime, is the applicable law.

When Chuuk seeks to revoke a prisoner's work release for violating a release condition, "[t]he revocation hearing, unless waived by the probationer, shall be held within a reasonable time." Chk. Crim. R. 32.1(a)(2). And "[w]henever a probationer is held in custody on the ground that he has violated a condition of his probation, he shall be afforded a prompt hearing before a judicial officer to determine whether there is probable cause to hold the probationer for a revocation hearing." Chk. Crim. R. 32.1(a)(1).

Since a convicted inmate is a probationer only when he is on work release and is otherwise properly in custody, the court must conclude that a preliminary probable cause hearing within 48 hours of the inmate's arrest would be prompt within the meaning of Chuuk Criminal Rule 32.1 and that a revocation hearing within 48 hours of the arrest for violation of probation would be within a reasonable time. Rocky Inek's September 10, 2010 court appearance therefore did not violate Chuuk Criminal Procedure Rule 32.1. Chuuk cannot be held civilly liable for Rocky Inek's detention as an arrestee from September 8, 2010 to September 10, 2010.

Chuuk Criminal Procedure Rule 32.1 also provides that the person whose release Chuuk is trying

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[1] 12 TTC 68 is Chuuk state law through the Chuuk Constitution's transition provision, Chk. Const. art. XV, § 9.

to revoke be given written notice of the alleged probation violation and informed of the evidence against him and given an opportunity to appear and to present evidence and to question adverse witnesses and be represented by counsel. Other than counsel at the September 10, 2010 hearing, Rocky Inek was not given any of these Rule 32.1 procedural rights. Rocky Inek's remedy for that failure would be a denial of Chuuk's attempt to revoke his work release. The Chuuk State Supreme Court gave him that remedy.

Rocky Inek arrest on November 4, 2010, was also for alleged work release violations. The court concludes that the arrest itself was not unlawful. But once his detention in the arrestee holding area had passed 72 hours without being charged with work release violations under Chuuk Criminal Procedure Rule 32.1, his continued detention there became unlawful. Therefore Chuuk is liable for Rocky Inek's detention in the holding cell from November 7 through November 12, 2010 and his unexplained detention without work release from November 12 through November 16, 2010.

Since no evidence was introduced about what would constitute constitutionally acceptable jail conditions in the FSM and in Chuuk and since little evidence was introduced about the actual conditions when Rocky Inek was there, there is insufficient evidence for the court to conclude that the general Chuuk jail conditions constituted cruel and unusual punishment for the convicted prisoners.

## DAMAGES

In Walter v. Chuuk, 14 FSM Intrm. 336, 340 (Chk. 2006), the court awarded the plaintiffs $10 an hour for the time they were held in the unsanitary holding cell at the Chuuk state jail, and in Warren v. Pohnpei State Dep't of Public Safety, 13 FSM Intrm. 483, 500 (Pon. 2005), the court awarded the plaintiff $10 an hour for his confinement in jail after an unlawful confinement beyond 24 hours of his unlawful arrest. Because of the lack of any other evidence, those figures seem appropriate here. For his unlawful detention and not being allowed work release from November 7 through November 16, 2010, Rocky Inek is awarded $10 an hour, equaling $2,160 (9 days = 216 hours = $2,160). Since this unlawful detention was a violation of Rocky Inek's right to due process, it is a civil rights violation, which under 11 F.S.M.C. 701(3) entitles him to reasonable attorney's fees and costs.

## CONCLUSION

Accordingly, the clerk shall enter judgment for Rocky Inek against the State of Chuuk in the amount of $2,160. Rocky Inek may, no later than November 4, 2013, file and serve his request for an award of reasonable attorney's fees, and if a request is filed, the State of Chuuk may file and serve its response no later than November 15, 2013.

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