

FSM SUPREME COURT APPELLATE DIVISION

DANIEL GLEASON,)	APPEAL CASE NO. P4-2010
)	(Pohnpei Appeal No. 01-09)
Appellant,)	
)	
vs.)	
)	
STATE OF POHNPEI,)	
)	
Appellee.)	
_____)	

ORDER EXTENDING TIME TO FILE APPEAL TO SEPTEMBER 1, 2010

Decided: February 19, 2014

BEFORE:

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

APPEARANCE:

For the Appellant: Stephen V. Finnen, Esq.
P.O. Box 1450
Kolonias, Pohnpei FM 96941

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HEADNOTES

Appellate Review – Notice of Appeal – Extension of Time; Appellate Review – Standard – Criminal Cases – Abuse of Discretion

While the FSM Supreme Court appellate division has no authority to waive or extend Rule 4’s time requirements or to grant a motion to extend time to appeal, a lower court’s grant or denial of an extension of time to file a notice of appeal is an appealable order reviewed under the abuse of discretion standard. Gleason v. Pohnpei, 19 FSM R. 283, 284 (App. 2014).

Appellate Review – Notice of Appeal – Extension of Time

Although Rule 4(b) has no absolute deadline within which the court appealed from must rule on a motion to extend the time to appeal, it does expect a fairly prompt ruling and encourages one within the thirty-day period. The lack of a ruling on the motion to extend is considered a denial. Gleason v. Pohnpei, 19 FSM R. 283, 285 (App. 2014).

Appellate Review – Notice of Appeal – Extension of Time

The court appealed from may extend the time to seek appellate review of a final decision upon a showing of excusable neglect or good cause. Failure to learn of the entry of judgment is a major, but not the only, reason for finding excusable neglect. Gleason v. Pohnpei, 19 FSM R. 283, 285 (App. 2014).

Appellate Review – Notice of Appeal – Extension of Time

When the July 23, 2010 Pohnpei Supreme Court appellate decision was not served on the appellant's counsel until eleven days after the decision was entered; when the time to appeal in a criminal case is ten days; when the failure to learn of the entry of judgment is a major reason for finding excusable neglect; when the Pohnpei Supreme Court appellate division has not ruled on the appellant's motion to extend time to appeal; and since the lack of a ruling on the motion to extend is considered a denial, the Pohnpei Supreme Court's denial of the motion to extend is reversed and the time for the movant to file his notice of appeal is extended 30 days to September 1, 2010. Gleason v. Pohnpei, 19 FSM R. 283, 285 (App. 2014).

Appellate Review – Notice of Appeal – Extension of Time

The grant of a motion to extend the time to appeal retroactively validates a previously-filed notice of appeal. Similarly, an appellate reversal of a lower court's denial of a motion to extend, retroactively validates a notice of appeal filed within the thirty-day extension period. Gleason v. Pohnpei, 19 FSM R. 283, 285 (App. 2014).

* * * *

COURT'S OPINION

PER CURIAM:

On September 1, 2010, Daniel Gleason filed in this court a Notice of Appeal from the Pohnpei Supreme Court appellate division's opinion in Pohnpei Supreme Court Appeal Case No. 01-09, entered on July 23, 2010. Attached as exhibits to the notice of appeal were 1) a Motion to Enlarge Time for Filing of Criminal Appeal, 2) two separate letters informing courts and counsel of the 2010 travel plans for Gleason's counsel, and 3) a copy of a Chuuk State Supreme Court appellate division order ruling concerning the date when an appellate opinion and judgment are entered. These were accompanied by a certificate of service on the Pohnpei Attorney General's office and on the Pohnpei Supreme Court. On September 3, 2010, Gleason filed his Statement of Issues, a Request for a Transcript, and a copy of the Pohnpei Supreme Court appellate division decision that he is appealing.

The court presumed that the reason Gleason filed attachments with his September 1, 2010 notice of appeal is that these attachments were filed in the Pohnpei Supreme Court appellate division as his Motion to Enlarge Time for Filing of Criminal Appeal and supporting exhibits, especially since that document has a Pohnpei Supreme Court appellate division heading and docket number. The court therefore ordered the parties to file with this court and serve the opposing party a statement on whether Gleason's Motion to Enlarge Time for Filing of Criminal Appeal was filed in the Pohnpei Supreme Court appellate division and, if so, a copy of that court's ruling on the motion. Gleason filed his report on April 30, 2012, and the appellee, State of Pohnpei, filed its report on May 11, 2012. Both reported that the Pohnpei Supreme Court appellate division had never ruled on the motion.

The Pohnpei Supreme Court appellate decision was not served on the appellant's counsel until eleven days after the decision was entered. The time to appeal in a criminal case is ten days. FSM App. R. 4(b). Thereafter the defendant had to be located and his desires ascertained. Counsel was able to file Gleason's notice of appeal on September 1, 2010.

While the FSM Supreme Court appellate division has no authority to waive or extend Rule 4's time requirements or to grant a motion to extend time to appeal, a lower court's grant or denial of an extension of time to file a notice of appeal is an appealable order reviewed under the abuse of discretion standard. Bualuay v. Rano, 11 FSM Intrm. 139, 146 (App. 2002). The Pohnpei Supreme Court

appellate division has not ruled on the motion to extend time. Although Rule 4(b) has no absolute deadline within which the court appealed from must rule on the motion to extend, it does expect a fairly prompt ruling and encourages one within the thirty-day period; the lack of a ruling on the motion to extend is considered a denial. Bualuay, 11 FSM Intrm. at 146. The court appealed from may extend the time to seek appellate review of a final decision upon a showing of excusable neglect or good cause. *Id.* Failure to learn of the entry of judgment is a major, but not the only, reason for finding excusable neglect. *Id.*

Excusable neglect exists here. NOW THEREFORE IT IS HEREBY ORDERED that the Pohnpei Supreme Court's denial of the motion to extend is reversed and the time for Gleason to file his notice of appeal is extended to September 1, 2010. The grant of a motion to extend time to appeal retroactively validates a previously-filed notice of appeal. Similarly, an appellate reversal of a lower court's denial of a motion to extend, retroactively validates a notice of appeal filed within the thirty-day extension period. Bualuay v. Rano, 11 FSM Intrm. 139, 148 (App. 2002).

Since the Pohnpei Supreme Court appellate division seems unable to transmit the records to this court, the parties are instructed to determine if they can agree on a record necessary for this appeal and submit that record to the appellate clerk so that he may transmit a record ready notice. The parties shall, jointly if possible, file their report on the record no later than March 4, 2014.

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FSM SUPREME COURT APPELLATE DIVISION

GMP HAWAII, INC.,)	APPEAL CASE NO. P6-2013
)	
Petitioner,)	
)	
vs.)	
)	
KENSLEY IKOSIA, FSM Secretary of Finance)	
and Administration,)	
)	
Respondent.)	
)	

ORDER DENYING WRIT OF MANDAMUS

Decided: March 6, 2014

BEFORE:

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

APPEARANCE:

For the Petitioner: Marstella E. Jack, Esq.
P.O. Box 2210
Kolonias, Pohnpei FM 96941