

The FSM has not shown that any contract or statute authorizes its request for attorney's fees and none are apparent. It is therefore denied.

V. CONCLUSION

Accordingly, based on collateral estoppel and issue preclusion, the FSM is granted partial summary judgment in the amount of \$24,052.80 with 9% interest thereon starting March 4, 2013. The FSM shall file and serve, no later than August 26, 2014, its statement on whether it will proceed on its remaining claims and its proposal for future proceedings.

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FSM SUPREME COURT TRIAL DIVISION

KANNY KON,)	CIVIL ACTION NO. 2012-1033
)	
Plaintiff,)	
)	
vs.)	
)	
CHUUK STATE,)	
)	
Defendant.)	
_____)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Ready E. Johnny
Associate Justice

Trial: April 28, 2014
Submitted: May 26, 2014
Decided: August 11, 2014

APPEARANCES:

For the Plaintiff: Derensio S. Konman, Esq.
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For the Defendant: Felicity A.M. Chamberlain, Esq.
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HEADNOTES

Criminal Law and Procedure – Cruel and Unusual Punishment; Criminal Law and Procedure – Prison and Prisoners

When a prisoner was kept incarcerated in state jail after he has finished his maximum jail sentence and when state officials, after the matter was brought to their attention, showed deliberate indifference to his continued incarceration, the prisoner was subjected to cruel and unusual punishment in violation of the FSM Constitution. Kon v. Chuuk, 19 FSM R. 463, 465-66 (Chk. 2014).

Constitutional Law – Declaration of Rights; Constitutional Law – Interpretation

While the court must first look to FSM sources of law to rather than begin with a review of other courts' decisions, when a FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision and when there is no FSM case law on point, United States authority may be consulted to understand its meaning. Kon v. Chuuk, 19 FSM R. 463, 466 n.1 (Chk. 2014).

Constitutional Law – Due Process; Criminal Law and Procedure – Prison and Prisoners

A prisoner's unlawful 161-day detention after the end of his sentence meant that he was deprived of his constitutional right not to be deprived of his liberty without due process of law. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

Constitutional Law – Due Process; Criminal Law and Procedure – Cruel and Unusual Punishment; Criminal Law and Procedure – Prison and Prisoners

Generally, the alleged mistreatment of pre-trial arrestees is subject to a due process analysis while that of convicted prisoners is analyzed under the cruel and unusual punishment standard. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

Constitutional Law – Due Process; Criminal Law and Procedure – Prison and Prisoners

A convicted prisoner whose sentence had already ended but who was still kept imprisoned for 161 more days can assert a procedural due process claim – he was denied his liberty without due process when, without a hearing or an opportunity to be heard, his prison term was effectively extended and his release date bypassed. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

Civil Rights – Acts Violating; Criminal Law and Procedure – Prison and Prisoners

The FSM civil rights statute, 11 F.S.M.C. 701(3), creates a private cause of action for damages against any person, including a state government, who deprives another of his civil rights guaranteed by the FSM Constitution. Chuuk therefore liable to a prisoner for depriving him of his civil right to be free from cruel and unusual punishment and to due process of law when it kept him in jail for 161 days after his sentence ended. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

Torts – False Imprisonment

False imprisonment's elements are: 1) restraint or detention of one against his or her will and 2) unlawfulness of the restraint or detention. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

Civil Rights – Remedies and Damage; Torts – Damages; Torts – False Imprisonment

A false imprisonment claim is separate and distinct from a civil rights claim, but, at the same time, it may serve as a basis for deprivation of liberty under the FSM civil rights statute. The relevant concern in this regard is that damages should not be awarded for both claims, since to do so would be to permit a double recovery. Kon v. Chuuk, 19 FSM R. 463, 466-67 (Chk. 2014).

Torts – False Imprisonment

The common law torts of false arrest and false imprisonment overlap a great deal and, in the

usual case, a false arrest is followed by and becomes a part of a false imprisonment. However, there are those occasions where a lawfully executed initial arrest may be followed by an unlawful detention giving rise to liability for false imprisonment. Kon v. Chuuk, 19 FSM R. 463, 467 (Chk. 2014).

Criminal Law and Procedure – Prison and Prisoners; Torts – False Imprisonment

When there was an initial lawful arrest followed by lawful confinement in the Chuuk state jail pursuant to Chuuk State Supreme Court orders, but once the prisoner’s release date passed his lawful detention became unlawful detention without an arrest and it thus became false imprisonment without a false arrest. Kon v. Chuuk, 19 FSM R. 463, 467 (Chk. 2014).

Civil Rights – Remedies and Damage; Criminal Law and Procedure – Cruel and Unusual Punishment; Torts – Damages

Valuing the loss of a person’s liberty interest because he was subjected to the cruel and unusual punishment of being forced to remain in jail for 161 days after his sentence had ended, is, like trying to calculate damages for pain and suffering, difficult because no fixed rules exist to aid in that determination, which lies in the court’s sole discretion. Kon v. Chuuk, 19 FSM R. 463, 467 (Chk. 2014).

Attorney’s Fees – Court-Awarded – Statutory; Civil Rights – Remedies and Damages

In an action brought under the civil rights statute, the court may award costs and reasonable attorney’s fees to the prevailing party. Kon v. Chuuk, 19 FSM R. 463, 467 (Chk. 2014).

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COURT’S OPINION

READY E. JOHNNY, Associate Justice:

On April 28, 2014, this came before the court for trial solely on the issue of damages. The plaintiff, Kanny Kon, and the Deputy Chief of Correction, Kamino Kastian, testified. Kon filed his written closing argument on May 19, 2014. The defendant, State of Chuuk, filed its written closing argument on May 26, 2014. At that point, the matter was considered submitted to the court for its decision.

I. BACKGROUND

It is undisputed that the plaintiff, Kanny Kon, was kept confined in the Chuuk state jail from December 4, 2010, when his three-year Chuuk State Supreme Court sentence was fully served, until he was released on May 15, 2011, although there was no legal basis or penological justification for this extra 161-day detention. State officials were provided with a copy of the Chuuk State Supreme Court commitment order and were asked several times to release Kon because his sentence had ended. They did not release him. Instead, they showed deliberate indifference to Kon’s continued unlawful detention.

Kon asserts that this unlawful detention makes Chuuk liable to him for due process violations, false arrest, false imprisonment, civil rights violations, and cruel and unusual punishment. He seeks money damages.

II. LEGAL BASIS

The FSM Constitution prohibits governments from inflicting cruel and unusual punishment on a

person. FSM Const. art. IV, §8. Chuuk state officials, when the matter was brought to their attention, showed deliberate indifference to Kon's continued incarceration after his maximum sentence had been served. Kon was thus subjected to cruel and unusual punishment.¹ See, e.g., Burke v. Johnston, 452 F.3d 665, 669 (7th Cir. 2010) ("incarceration after the time specified in a sentence has expired" violates the prohibition of cruel and unusual punishment "if it is the product of deliberate indifference"); Moore v. Tratler, 986 F.2d 682, 686 (3d Cir. 1993) (when investigation into prisoner's complaint that he was held too long was slow and incompetent but resulted in his release, there was no deliberate indifference and thus no cruel and unusual punishment); Alexander v. Perrill, 916 F.2d 1392, 1398-99 (9th Cir. 1990) (failure to investigate prisoner's claim and evidence that he should have been released was deliberate indifference and prisoner's unlawful detention was cruel and unusual punishment); Sample v. Diecks, 885 F.2d 1099, 1110 (3d Cir. 1989) (to establish liability 1) prison official must have knowledge of problem and thus the risk of unwarranted punishment; 2) official either failed to act or was deliberately indifferent to problem; and 3) causal connection between official's response and infliction of unjustified detention); Haygood v. Younger, 769 F.2d 1350, 1354 (9th Cir. 1985) (en banc) ("Detention beyond the termination of a sentence could constitute cruel and unusual punishment if it is the result of 'deliberate indifference' to the prisoner's liberty interest; otherwise, such detention can be held to be unconstitutional only if it violates due process."), *cert. denied*, 478 U.S. 1020 (1986); Russell v. Lazar, 300 F. Supp. 2d 716, 720 (E.D. Wis. 2004) ("Incarcerating a prisoner beyond the termination of his sentence without penological justification violates . . . prohibition of cruel and unusual punishment when it is the product of deliberate indifference."); cf. Plais v. Panuelo, 5 FSM Intrm. 179, 199-200 (Pon. 1991) (deliberate indifference to a prisoner's medical needs can amount to cruel and unusual punishment).

Kon's unlawful 161-day detention also meant that he was deprived of his constitutional right not to be deprived of his liberty without due process of law. FSM Const. art. IV, § 3; Chk. Const. art. III, §2. Generally, the alleged mistreatment of pre-trial arrestees is subject to a due process analysis while that of convicted prisoners is analyzed under the cruel and unusual punishment standard. Plais, 5 FSM Intrm. at 190. Kon was a convicted prisoner. However, since he was a prisoner whose sentence had already ended he could also assert a procedural due process claim – he was denied his liberty without due process when, without a hearing or an opportunity to be heard, his prison term was effectively extended and his release date bypassed. Haygood, 769 F.2d at 1357.

The FSM civil rights statute, 11 F.S.M.C. 701(3), creates a private cause of action for damages against any person, including a state government, who deprives another of his civil rights guaranteed by the FSM Constitution. Louis v. Kutta, 8 FSM Intrm. 208, 211 (Chk. 1997). Chuuk is therefore liable to Kon for depriving him of his civil right to be free from cruel and unusual punishment and to due process of law.

Kon was also a victim of the common law tort of false imprisonment. False imprisonment's elements are: 1) restraint or detention of one against his or her will and 2) unlawfulness of the restraint or detention. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM Intrm. 483, 492 (Pon. 2005). This claim is separate and distinct from a civil rights claim, but, at the same time, it may serve as a basis for deprivation of liberty under the FSM civil rights statute. "The relevant concern in this regard is that damages should not be awarded for both claims, since to do so would be to permit a double

¹ While the court must first look to FSM sources of law to rather than begin with a review of other courts' decisions, Alaphonso v. FSM, 1 FSM Intrm. 209, 214 (App. 1982), when a FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision and when there is no FSM case law on point, United States authority may be consulted to understand its meaning, Primo v. Pohnpei Transp. Auth., 9 FSM Intrm. 407, 412 n.2 (App. 2000).

recovery." FSM v. Koshin 31, 16 FSM Intrm. 350, 355 (Pon. 2009).

Kon also claims to be a victim of false arrest. The common law torts of false arrest and false imprisonment overlap a great deal and, in the usual case, differ mainly in terminology. *See, e.g., Great Atlantic & Pacific Tea Co. v. Paul*, 261 A.2d 731, 738 (Md. 1970). In the usual case, a false arrest is followed by and becomes a part of a false imprisonment. However, there are those occasions where a lawfully executed initial arrest may be followed by an unlawful detention giving rise to liability for false imprisonment. *E.g., Landry v. A-Able Bonding, Inc.*, 75 F.3d 200, 206 (5th Cir. 1996) (citing Gladden v. Roach, 864 F.2d 1196, 1201 (5th Cir. 1989)). That is the case here. There was an initial lawful arrest followed by lawful confinement in the Chuuk state jail pursuant to Chuuk State Supreme Court orders. Once Kon's release date passed his lawful detention became unlawful detention without an arrest and it thus became false imprisonment without a false arrest.

Kon's continued detention after his sentence had been served constituted the infliction of cruel and unusual punishment and a violation of Kon's right to due process of law. Chuuk thus violated Kon's civil rights to due process and to freedom from the infliction of cruel and unusual punishment. These violations also constituted the common law tort of false imprisonment.

III. DAMAGES

Kon seeks damages based on his earning capacity or lost income for those 161 days. Kon lost his job as a cook at a junior high school due to his lawful arrest and conviction in the state court. Kon testified at trial that before his arrest, incarceration, and conviction that he had also been earning \$2,000 selling salt fish and five or more turtles per month, every month, even though he conceded that he had to share any money with the other members of his turtle-catching team. This testimony was not credible. Kon also testified he has not had any gainful employment, including turtle fishing, since his release from jail in May 2011. There is no evidence that, if Kon had been released on time, he would have earned any income in the 161 days from December 4, 2010, to May 15, 2011. The court can find no basis on which to grant Kon an award for "lost income."

Kon also seeks to have damages for unlawful imprisonment calculated at the rate of \$240 per day. Valuing the loss of a person's liberty interest because he was subjected to the cruel and unusual punishment of being forced to remain in jail for 161 days after his sentence had ended, is, like trying to calculate damages for pain and suffering, difficult because no fixed rules exist to aid in that determination, which lies in the court's sole discretion. *See Lippwe v. Weno Municipality*, 14 FSM Intrm. 347, 353 (Chk. 2006). The court nevertheless must try. After weighing all the considerations, the court will assess damages at the rate of \$65 per day for 161 days, which equals \$10,465.

"In an action brought under [the civil rights statute], the court may award costs and reasonable attorney's fees to the prevailing party." 11 F.S.M.C. 701(3). Kon shall file and serve any fees and costs request within 21 days of entry of this order.

IV. CONCLUSION

Accordingly, the clerk shall enter judgment in Kanny Kon's favor against the State of Chuuk in the amount of \$10,465 plus attorney's fees and costs.

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