

Legislature v. Sigrah, 11 FSM Intrm. 110, 113 (Kos. S. Ct. Tr. 2002); Sigrah v. Kosrae, 12 FSM Intrm. 513, 518 (Kos. S. Ct. Tr. 2004); Benjamin v. Youngstrom, 13 FSM Intrm. 72, 75 (Kos. S. Ct. Tr. 2004). Indeed, it appears that the Petitioner has acknowledged she may not prevail on appeal. Moreover, the Petitioner has failed to identify a single error of the FSM Court in entering the sale order. Given these circumstances, the Court finds that the Petitioner has failed to show that she has likelihood of success on the merits.

3. *Balance of Possible Injuries Between the Parties*

With respect to the balance of possible injuries requirement, the Court finds that the Midas would bear the risk. Any potential harm suffered by the Petitioner is minimal considering that the Petitioner cannot establish a likelihood of success on the merits.

4. *Public Interest*

The next factor asks for a determination of where the public interest lies. Based on the arguments advanced by the Petitioner in her TRO Motion, it is unclear how the public interest will be served by entering a temporary restraining order. Thus, the Court cannot find based on the Petitioner's unsupported allegations (which are not evidence) that a temporary restraining order is warranted in this case.

III. CONCLUSION

Because each of the four factors considered by the Court favors denying the motion for a temporary restraining order,

IT IS HEREBY ORDERED that the petitioner's TRO Motion is DENIED.

IT IS FURTHER ORDERED that the Petitioner's Emergency Motion is DENIED.

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CHUUK STATE SUPREME COURT TRIAL DIVISION

CHUUK STATE	)	CSSC CR. NO. 040-2014
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
SANSER KAPWICH,	)	
	)	
Defendant.	)	
_____	)	

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

Jayson Robert  
Associate Justice

Decided: September 15, 2014

APPEARANCES:

For the Plaintiff: Nemwarichen Salle  
State Prosecutor  
Office of the Attorney General  
P.O. Box 1050  
Weno, Chuuk FM 96942

For the Defendant: Charleston L. Bravo (motion)  
Office of the Public Defender  
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HEADNOTES

Criminal Law and Procedure – Speedy Trial

The four-factor balancing test applicable for cases implicating a defendant's right to a speedy trial or a Chuuk Criminal Rule 48(b) dismissal for unnecessary delay in prosecution include: 1) length of delay, 2) the reason for the delay, 3) the defendant's assertion of his right, and 4) prejudice to the defendant. 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. Chuuk v. Kapwich, 19 FSM R. 548, 550 (Chk. S. Ct. Tr. 2014).

Criminal Law and Procedure – Speedy Trial – Length of Delay

When the criminal information was re-filed against the defendant a little over six months after the alleged incident and when the defendant has been charged with felonious crimes, not misdemeanors, it cannot be viewed as a lengthy delay that would trigger further analysis and consideration of the remaining three speedy trial factors. Chuuk v. Kapwich, 19 FSM R. 548, 550 (Chk. S. Ct. Tr. 2014).

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COURT'S OPINION

JAYSON ROBERT, Associate Justice:

On August 12, 2014, Defendant Sanser Kapwich ("Defendant") filed a motion to dismiss pursuant to Rules 12(b) and 48(b) of the Chuuk State Supreme Court Rules of Criminal Procedure ("Motion"). In his Motion, Defendant appears to be arguing that the Defendant's right to a speedy trial was violated due to the "delay in filing of the criminal information," citing Kosrae v. Langu, 15 FSM Intrm. 601, 603 (Kos. S. Ct. Tr. 2008). Mot. at 1. In response, the Plaintiff Chuuk State ("State") filed an opposition to the Motion on August 22, 2014.

For the reasons set forth herein, the Defendant's Motion is DENIED.

I. BACKGROUND

On May 22, 2014, the State re-filed a criminal information against the Defendant, charging him with sexual assault, sexual abuse, false imprisonment, assault, and threat in connection with an incident

that allegedly occurred on November 11, 2013.

In response to the State's request for an arrest warrant, the Court issued a warrant for the Defendant on May 27, 2014.

The Defendant was arrested on July 14, 2014. Seven days later, on July 21, 2014, Defendant appeared for arraignment with his counsel, Bethwell O'Sonis from the FSM Public Defender's Office and pleaded not guilty to all charges. At the arraignment hearing, the Court issued a scheduling order and set a trial date for September 2, 2014.

## II. ANALYSIS

The Motion asks the Court to dismiss the criminal information on the basis that there was a delay in filing the criminal information. Specifically, the Defendant points to the fact that the incident giving rise to the charges against the Defendant occurred on November 11, 2013; but the criminal information was filed on May 22, 2014, more than six months after the alleged crime.<sup>1</sup>

The four-factor balancing test applicable for cases implicating a defendant's right to a speedy trial or a Chuuk Criminal Rule 48(b) dismissal for unnecessary delay in prosecution include: (1) length of delay, (2) the reason for the delay, (3) the defendant's assertion of his right, and (4) prejudice to the defendant. Chuuk v. William, 15 FSM Intrm. 381, 386 (Chk. S. Ct. Tr. 2007). 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. *Id.*

In this case, the criminal information was re-filed against the Defendant a little over six months after the alleged incident. The Court does not take the position that a "little over 6 months" can be viewed as a lengthy delay, to trigger further analysis and consideration of the remaining three factors. William, 15 FSM Intrm. at 386 ("A delay of one year is presumptively prejudicial and triggers application of the three remaining factors.").

The authority cited by the Defendant does not change this result. The Kosrae v. Langu case is not binding on this Court. Moreover, the Defendant in this case has been charged with felonious crimes, not misdemeanors like the defendant in Kosrae v. Langu. Accordingly, it is inapplicable.

## III. CONCLUSION

For the foregoing reasons, the Defendant's Motion is hereby DENIED.

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<sup>1</sup> The Motion fails to mention that the first criminal information was filed on April 24, 2014, in CSSC Crim. Case No. 037-2014. However, that case was dismissed pursuant to Rule 48 (b) without prejudice for the reasons set forth in the order entered on May 14, 2014.