

Motion for Rule 11 Sanctions

On August 28, 2014, Plaintiff moved for the imposition of Rule 11 against Defendants, in light of the latter's motion seeking injunctive relief. The relief coveted in Defendants' subject motion was not warranted for the reasons set forth above, coupled with the post-judgment posture of this case. Nevertheless, the movant could have labored under the impression that forthcoming Rulings on Defense Counsel's numerous pending motions compelled the filing in issue, in order to thwart what was interpreted as immediate or irreparable injury to property in which, Defendants could conceivably still maintain an interest should they prevail in those respective entreaties for relief from previously issued Judgments.

Accordingly, Plaintiff's Motion to Impose Rule 11 Sanctions against Defendants is hereby DENIED.

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FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA,)	CRIMINAL CASE NO. 2015-500
)	
Plaintiff,)	
)	
vs.)	
)	
JOHN EHSA,)	
)	
Defendant.)	
_____)	

ORDER DENYING DISMISSAL

Ready E. Johnny
Acting Chief Justice

Hearing: July 6, 2015
Decided: July 27, 2015

APPEARANCES:

For the Plaintiff:	Joses R. Gallen, Esq. Attorney General Caroline A. Rugero, Esq. (argued) Assistant Attorney General FSM Department of Justice P.O. Box PS-105 Palikir, Pohnpei FM 96941
For the Defendant:	Lorrie Johnson-Asher, Esq. Office of the Public Defender P.O. Box PS-174 Palikir, Pohnpei FM 96941

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HEADNOTES

Criminal Law and Procedure – Information

A criminal information's primary purpose is to inform the defendant of the charges against him so that he may prepare his defense, and to advise the court of the facts alleged so that the court may determine whether those facts, if proven, may support a conviction. An information deficient in these respects may be dismissed without prejudice. FSM v. Ehsa, 20 FSM R. 106, 108 (Pon. 2015).

Criminal Law and Procedure – Information

The test for a particular information's sufficiency is whether it is fair to the defendant to require him to defend on the basis of the charge as stated therein. Liberality is the guide in testing an information's sufficiency in charging all the essential elements of the offense, although this applies to matters of form and not of substance. FSM v. Ehsa, 20 FSM R. 106, 108-09 (Pon. 2015).

Criminal Law and Procedure – Information

An information will not be thrown out because of minor, technical objections which do not prejudice the accused because the Criminal Procedure Rules do not countenance the practice of fine combing or nit picking a criminal information for verbal and technical omissions. Substantial compliance is sufficient. FSM v. Ehsa, 20 FSM R. 106, 109 (Pon. 2015).

Criminal Law and Procedure – Information

To determine whether an information is deficient, the information and its supporting affidavit must be read together. FSM v. Ehsa, 20 FSM R. 106, 109 (Pon. 2015).

Criminal Law and Procedure – Information

When the supporting affidavit refers to "Governor Ehsa"; when paragraph 1 of the information states that "the defendant, John Ehsa," is an FSM citizen and a Pohnpei resident; when paragraph 4 refers to the "defendant, the Governor of the State of Pohnpei" and paragraph 5 quotes the court order, whose alleged violation gave rise to this criminal case, as enjoining, among others, "John Ehsa, in his capacity as Governor," that leaves no doubt that the defendant named as John Ehsa in paragraph 1 of the information is the John Ehsa who is the Governor of Pohnpei. FSM v. Ehsa, 20 FSM R. 106, 109 (Pon. 2015).

Criminal Law and Procedure – Information

A criminal case is not a civil action where a person might appear in his official capacity, or his individual capacity, or both. In a criminal case, a person can only be prosecuted as an individual regardless of what capacity he was acting under while committing the acts that gave rise to the prosecution. FSM v. Ehsa, 20 FSM R. 106, 109 (Pon. 2015).

Criminal Law and Procedure – Information

When the charges are pled in the disjunctive – or – so that the prosecution only has to prove one of several methods of committing the crimes charged; when the counts are very clear about the defendant's conduct for which the prosecution seeks to hold him criminally liable; and when the counts clearly state the act(s) that the defendant is accused of committing that allegedly give rise to criminal liability, the information is sufficient to permit the defendant to prepare his defense and it is fair to require him to defend on the basis of the charges as pled. FSM v. Ehsa, 20 FSM R. 106, 110 (Pon. 2015).

Contempt – Criminal

Section 119, in Title 4, undisputedly by its terms provides for criminal as well as civil contempt. FSM v. Ehsa, 20 FSM R. 106, 110 (Pon. 2015).

Contempt – Criminal: Statutes – Construction

That the criminal offense of contempt of court statute is in Title 4, instead of Title 11, is meaningless and no inference that it is not a crime can be drawn from it. This is because the classification of the titles, chapters, subchapters, and sections of the FSM Code, and the headings thereto, are made for the purpose of convenient reference and orderly arrangement, and no implication, inference, or presumption of a legislative construction can be drawn therefrom. FSM v. Ehsa, 20 FSM R. 106, 110 (Pon. 2015).

Contempt – Criminal

In the usual criminal contempt proceeding, the defendant is charged with criminal contempt by a government attorney. The FSM Department of Justice is the office that files an information accusing a defendant of criminal contempt of a national court. FSM v. Ehsa, 20 FSM R. 106, 110 (Pon. 2015).

Contempt – Criminal

The court rejects the notion that contempt of court is not a criminal offense and that the FSM Department of Justice cannot criminally prosecute alleged contemnors. FSM v. Ehsa, 20 FSM R. 106, 110 (Pon. 2015).

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COURT'S OPINION

READY E. JOHNNY, Acting Chief Justice:

On July 6, 2015, this came before the court to hear the defendant's Motion to Dismiss, filed June 8, 2015; and the Plaintiff's Response to Defendant's Motion to Dismiss, filed June 18, 2015. The motion is denied. The reasons follow.

I. BACKGROUND

John Ehsa is charged with Deprivation of Civil Rights (11 F.S.M.C. 701); Obstruction of Justice (11 F.S.M.C. 501 in relation to 11 F.S.M.C. 301); and Criminal Contempt (4 F.S.M.C. 119). He moves for dismissal of the information against him because it is deficient since the information names the wrong defendant by prosecuting him in his individual capacity while alleging that the offense was committed under the color of law; since the vague, ambiguous, and confusing particulars of each count fail to explicitly describe his criminal conduct and therefore deprives him of the notice needed for him to prepare his defense; and since it alleges an offense that has not been prescribed as criminal in nature under Title 11 of the FSM Code or under any other title.

A criminal information's primary purpose is to inform the defendant of the charges against him so that he may prepare his defense, and to advise the court of the facts alleged so that the court may determine whether those facts, if proven, may support a conviction, and an information deficient in these respects may be dismissed without prejudice. FSM v. Meitou, 18 FSM R. 121, 127 (Chk. 2011); FSM v. Phillip, 17 FSM R. 413, 426 (Pon. 2011); FSM v. Sato, 16 FSM R. 26, 29 (Chk. 2008); FSM v. Moses, 9 FSM R. 139, 145 (Pon. 1999); FSM v. Xu Rui Song, 7 FSM R. 187, 189 (Chk. 1995). The test for a particular information's sufficiency is whether it is fair to the defendant to require him to defend on the basis of the charge as stated therein. Meitou, 18 FSM R. at 127; Sato, 16 FSM R.

at 29. Liberality is the guide in testing an information's sufficiency in charging all the essential elements of the offense, although this applies to matters of form and not of substance. Meitou, 18 FSM R. at 129. An information will not be thrown out because of minor, technical objections which do not prejudice the accused, FSM v. Sorim, 17 FSM R. 515, 519 (Chk. 2011); FSM v. Suzuki, 17 FSM R. 70, 77 (Chk. 2010); FSM v. Kansou, 15 FSM R. 373, 380 (Chk. 2007); Xu Rui Song, 7 FSM R. at 189, because the Criminal Procedure Rules do not countenance the practice of fine combing or nit picking a criminal information for verbal and technical omissions; substantial compliance is sufficient. Sorim, 17 FSM R. at 519-20.

II. WHETHER THE INFORMATION NAMES THE WRONG DEFENDANT

Ehsa asserts that the information is defective because it named the wrong defendant. Ehsa asserts that the information does not establish a connection between the individual person named as the defendant in paragraph 1 of the information and "the Governor" whose alleged acts in the remainder of the information gave rise to this criminal case. He speculates that defendant John Ehsa, as John Ehsa is a common name on Pohnpei, could be someone other than Governor John Ehsa. The court must reject this contention.

To determine whether an information is deficient, the information and its supporting affidavit must be read together. Meitou, 18 FSM R. at 129; Sorim, 17 FSM R. at 520; Phillip, 17 FSM R. at 426; Sato, 16 FSM R. at 29.

The supporting affidavit refers to "Governor Ehsa." Paragraph 1 of the information states that "[t]he defendant, John Ehsa," is an FSM citizen and a Pohnpei resident. Information at 1 (Mar. 23, 2015). Paragraph 4 refers to "the defendant, the Governor of the State of Pohnpei" and paragraph 5 quotes the FSM Civil Action No. 2013-001 court order, whose alleged violation gave rise to this criminal case, as enjoining, among others, "John Ehsa, in his capacity as Governor." That leaves no doubt that the defendant named as John Ehsa in paragraph 1 of the Information is the John Ehsa who is the Governor of Pohnpei.

Ehsa also contends that the information should be dismissed because it "[n]ames the wrong defendant by suing the defendant in his individual capacity while [it] alleges that the offense committed was executed under the color of law." Mot. to Dismiss at 1 (June 8, 2015).

This is not a civil action where a person might appear in his official capacity, or his individual capacity, or both. This is a criminal case. In a criminal case, a person can only be prosecuted as an individual regardless of what capacity he was acting under while committing the acts that gave rise to the prosecution. By way of illustration, it is not possible to convict and incarcerate someone in only one capacity while at the same time not convicting him and not incarcerating him in his other capacity.

III. WHETHER INFORMATION IS VAGUE, AMBIGUOUS, AND CONFUSING

Ehsa also contends that the information must be dismissed because it is vague, ambiguous, and confusing in describing the particulars of each count and thus fails to explicitly describe his criminal conduct and therefore deprives him of the notice needed for him to prepare his defense. Ehsa contends that because Counts I and II both assert that "the defendant intentionally conspired, aided, abetted, advised, solicited, counseled, encouraged, commanded, threatened, menaced or coerced another to commit a crime, or conspires, or having a legal duty to prevent the commission of a crime, failed to make proper effort to do so," Information at 6, para. 27, at 6-7, para. 29 (Mar. 23, 2015), the information fails to state the conduct establishing intent; fails to state with whom he conspired, or whom he aided and abetted, or who he coerced to commit a crime; and fails to state what specific

conduct he himself engaged in that deprived Luen Thai fishing Venture and its employees of their civil rights.

Ehsa overlooks that the charges are pled in the disjunctive – or – so that the prosecution only has to prove one of these methods of committing the crimes charged. Both counts are very clear about Governor Ehsa's conduct for which the prosecution seeks to hold him criminally liable. In Paragraph 27, Ehsa is alleged to have willfully deprived Luen Thai Fishing Venture and its employees of their civil rights to property and their lawful employment "when he ordered the forced eviction of LTFV without any legal basis" on or about March 16, 2015. Information at 6 (Mar. 23, 2015). Likewise, for the obstruction of justice charge, the information charges that Ehsa "ordered Pohnpei State law enforcement officials to prevent FSM National Police from entering the old PNI facility to enforce the injunction in FSM Civil Action [No.] 2013-001." Information at 7 (Mar. 23, 2015).

Counts I and II clearly state the act(s) that Ehsa is accused of committing that allegedly give rise to criminal liability. The information is thus sufficient to permit Ehsa to prepare his defense and it is fair to require Ehsa to defend on the basis of the charges as pled in Counts I and II.

IV. WHETHER CONTEMPT OF COURT IS A CRIMINAL OFFENSE

Ehsa contends that Count III, Contempt of Court, should be dismissed since it is not a criminal offense because FSM Code Title 11, the FSM Criminal Code, does not criminalize contempt and since Title 4, where the contempt statute is found, deals with the organization of the FSM Judiciary.

Section 119, in Title 4, undisputedly by its terms provides for criminal as well as civil contempt. That the criminal offense of contempt of court statute is in Title 4, instead of Title 11, is meaningless and no inference that it is not a crime can be drawn from it. This is because "[t]he classification of the titles, chapters, subchapters, and sections of this code, and the headings thereto, are made for the purpose of convenient reference and orderly arrangement, and no implication, inference, or presumption of a legislative construction shall be drawn therefrom." 1 F.S.M.C. 210. The court notes that there are other national crimes in various places in the FSM Code that are not found in Title 11. *See, e.g.*, 9 F.S.M.C. 604(3); 19 F.S.M.C. 425; 20 F.S.M.C. 801(3); 20 F.S.M.C. 902; 24 F.S.M.C. 902; 54 F.S.M.C. 245 to 264.

Ehsa also contends that only the court has the power to punish contempt under 4 F.S.M.C. 119, implying that the FSM Department of Justice cannot prosecute someone for criminal contempt. That, however, is not true. In the usual criminal contempt proceeding, the defendant is, as here, charged with criminal contempt by a government attorney. *Cheida v. FSM*, 9 FSM R. 183, 189 & n.3 (App. 1999). The FSM Department of Justice is the office that files an information accusing a defendant of criminal contempt of a national court.

Therefore, the court must reject the notion that contempt of court is not a criminal offense and that the FSM Department of Justice cannot criminally prosecute alleged contemnors. Count III will not be dismissed.

V. CONCLUSION

Accordingly, John Ehsa's motion to dismiss is denied. The court will take defendant John Ehsa's plea on Thursday, September 3, 2015, at 10:00 a.m. If a not guilty plea is entered on any count, trial will start at 10:30 a.m., the same day.

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