

FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA,

Plaintiff,

vs.

ERICK BISALEN,

Defendant.

CRIMINAL CASE NO. 2014-502

ORDER DENYING MOTION TO TRAVEL AND TO RELOCATE

Beauleen Carl-Worswick
Associate Justice

Hearing: June 16, 2016
Decided: June 24, 2016

APPEARANCES:

For the Plaintiff: Clayton M. Lawrence, Esq.
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For the Defendant: Timoci Romanu, Esq.
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HEADNOTES

Criminal Law and Procedure – Motions – Unopposed

Although the government did not file a response to the defendant's motion, it was allowed to orally respond to the motion during the hearing because the defendant did not oppose the government's participation. FSM v. Bisalen, 20 FSM R. 471, 472 (Pon. 2016).

Compact of Free Association; Criminal Law and Procedure – Sentence

The Compact of Free Association has a provision by which sentences imposed by FSM courts on U.S. citizens may be served in U.S. penal institutions, but if they go through the diplomatic channels and comply with transfer procedures and eligibility, but the Compact does not have a section that deals with an FSM citizen under a sentence rendered by a FSM court who seeks to serve the remaining term of his sentence in a U.S. jurisdiction. FSM v. Bisalen, 20 FSM R. 471, 473 (Pon. 2016).

Criminal Law and Procedure

In matters of first impression, the court may look to case law of other jurisdictions, particularly the United States, for comparison and guidance. FSM v. Bisalen, 20 FSM R. 471, 473 (Pon. 2016).

Criminal Law and Procedure – Sentence – Probation

Since probation law is intended in part to rehabilitate the offender without imprisonment, it contemplates that during the probation period he will be within the jurisdiction of the court that retains control over him and will be available to probation officers for the performance of their duties. FSM v. Bisalen, 20 FSM R. 471, 474 (Pon. 2016).

Criminal Law and Procedure – Sentence – Probation

There is no authority to allow an FSM defendant with a remaining term on his probation to relocate to a foreign jurisdiction when that defendant has not produced any evidence that any steps have been taken in notifying or seeking permission from a court within that foreign jurisdiction for the purposes of monitoring his whereabouts and to oversee his compliance with his terms of release. The burden will be on the defendant to furnish proof of a court there that is willing to oversee the remaining term of his probation. FSM v. Bisalen, 20 FSM R. 471, 474 (Pon. 2016).

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COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

I. BACKGROUND

On December 3, 2014, the defendant, Erick Bisalen (herein "Bisalen"), was convicted and sentenced by the court in this matter. Terms of his sentence include a two (2) year probationary period, to submit his passport to the court, and to obtain the court's permission to travel outside of Pohnpei and the FSM.

On May 17, 2016, Bisalen filed a Motion to Travel and Relocate. The motion seeks the court's permission to allow the defendant to travel and relocate to the State of Hawaii in the U.S. The motion states that the plaintiff, Federated States of Micronesia (herein "the Government") opposes the motion, however, no opposition was filed.

A hearing on the motion was held on June 16, 2016. Clayton M. Lawrence, Esq., through the FSM Department of Justice, appeared on behalf of the Government. Timoci Romanu, Esq., through the FSM Public Defender's Office, appeared on behalf of Bisalen. Bisalen was also present during the hearing.

II. DISCUSSION

As a preliminary matter the court addressed the issue of the Government not filing a response to Bisalen's motion, and whether or not the Government should be allowed to present any arguments during the hearing. Because Bisalen did not oppose the Government's participation, the Government was allowed to orally respond to the motion.

The basis of Bisalen's motion is that he has successfully complied with the terms of his sentence, a Complaint for Divorce from his wife has been filed at the Pohnpei State Court, a period of six (6) months is all that remains on his probation, and he plans on moving to Hawaii to live with a

cousin where a job is awaiting. The Government raised policy concerns over allowing Bisalen to leave the jurisdiction of the court and being unable to monitor his whereabouts, specifically his compliance with the remaining term of probation.

The court inquired with the parties on any authority that would allow the court to maintain jurisdiction over the defendant while serving the remainder of his probationary period outside of the FSM. The parties answered in the negative.

On June 17, 2016, Bisalen entered a Supplement to Motion Requesting Permission to Travel and Relocate, and the Government filed an opposition on June 20, 2016. The supplemental motion cites FSM v. Tarangutu Uerem, docketed as FSM Criminal Action No. 2016-501, where the court allowed the defendant, a citizen of Kiribati, to leave the jurisdiction of the FSM and return to his home country of Kiribati to serve out the rest of his sentence.

The facts in Uerem are distinguishable from the present matter. Here, Bisalen is a FSM citizen seeking to move to Hawaii for employment and residential purposes. On the other hand, Uerem was a Kiribati citizen who was employed on a fishing vessel in FSM waters, and was terminated from his employment as a result of the criminal action filed against him. It was in the best interest of the FSM to allow Uerem to return home to Kiribati, and not compel him to remain in the FSM with no residency, no source of income, or no lawful reason to remain within the court's jurisdiction. The opposite holds true for Bisalen because the court has an interest in exercising jurisdiction over its citizens and to ensure that probationary terms handed out by the court are served.

In support of his motion to relocate, Bisalen attached a copy of a Complaint for Divorce filed in Pohnpei Supreme Court docketed as PCA No. 137-16. During the hearing on June 16, 2016, Bisalen stated that the divorce proceeding is still pending. The court is mindful that these types of proceedings deal with the disposition of assets, disposal of property, custody rights, and other family related matters. The court is reluctant to allow Bisalen to relocate while the divorce matter remains unresolved.

Another important distinction between these two cases is that in Uerem the Government did not object to the defendant returning home to Kiribati. In regards to Bisalen, the Government opposed the relocation at the hearing on June 16, 2016 and entered an opposition to the supplement to Bisalen's motion on June 20, 2016.

The closest legal authority here in the FSM that governs a somewhat related matter is found in the Compact of Free Association between the FSM and the U.S. Under Title Four, Article I of the Agreement on Extradition, Mutual Assistance in Law Enforcement Matters and Penal Sanctions Concluded Pursuant to Section 175 of the Amended Compact of Free Association, sentences imposed by courts of the FSM on citizens of the U.S. may be served in U.S. penal institutions, but must go through the diplomatic channels and comply with transfer procedures and eligibility.¹ The Compact, however, does not have a section that deals with the present matter where an FSM citizen under a sentence rendered by a FSM court seeks to serve the remaining term of his sentence in a U.S. jurisdiction.

¹ "Sentences imposed by the courts of the Federated States of Micronesia on citizens or nationals of the United States may be served in penal institutions of the United States or under the supervision of its authorities in accordance with the provisions of this Agreement." Agreement on Extradition, Mut. Assistance in Law Enforcement Matters & Penal Sanctions Concluded Pursuant to § 175 of the Amended Compact of Free Ass'n, tit. 4, art. I.

Because the issue of relocation to another jurisdiction while under probation may be a matter of first impression, the court may look to case law of other jurisdictions, particularly the United States, for comparison and guidance. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM Intrm. 157, 160 (Pon. 1989); Federated Shipping Co. v. Ponape Transfer & Storage, 4 FSM Intrm. 3, 9 (Pon. 1989); Semens v. Continental Air Lines, 2 FSM Intrm. 131, 137 (Pon. 1985).

Certain legal sources discuss the transfer of supervision of probationers from district to district, but not from one foreign country to another.² 18 U.S.C.A. § 3605 governs such transfers within districts. This statute states

A court, after imposing a sentence, may transfer jurisdiction over a probationer or person on supervised release to the district court for any other district to which the person is required to proceed as a condition of his probation or release, or is permitted to proceed, *with the concurrence of such court*. A later transfer of jurisdiction may be made in the same manner. A court to which jurisdiction is transferred under this section is authorized to exercise all powers over the probationer or releasee that are permitted by this subchapter or subchapter B or D of chapter 227.

18 U.S.C.A. § 3605 (emphasis added).

Similarly, 3 CHARLES ALAN WRIGHT & SARAH N. WELLING, FEDERAL PRACTICE AND PROCEDURE § 547 (4th ed. 2011) states

Since probation law is intended in part to rehabilitate the offender without imprisonment, it contemplates that during the probation period he will be within the jurisdiction of the court that retains control over him and will be available to probation officers for the performance of their duties. Offenders on probation, with the permission of the court, may go to another district, and in that event the court may transfer supervision of the probationer to the court of that district. The transferee court then has all the power of the sentencing court except that the period of probation may not be changed without the consent of the sentencing court. The process may be repeated during the probation whenever the petitioner goes to another district.

Id. at 279 (footnotes omitted).

Here, during the hearing on June 16, 2016, counsel for Bisalen had stated that moving back to his home-state of Chuuk is an option, however, he may face difficulties in securing employment. Based on the authority cited above, the court is amendable to allowing Bisalen to relocate to Chuuk as he will remain within the court's jurisdiction, and the court will be able to monitor his compliance with his terms of probation. Bisalen may refile this motion to relocate to Chuuk, if he chooses to do so.

Further, the court finds no authority to allow Bisalen to relocate to a foreign jurisdiction with a remaining term on his probation. Bisalen has not produced any evidence that any steps have been taken in notifying or seeking permission from a court within the jurisdiction of the State of Hawaii for the purposes of monitoring his whereabouts and to oversee his compliance with his terms of release. The burden will be on Bisalen to furnish proof of a court in the State of Hawaii that is willing to oversee

² "District" is defined as "A territorial area into which a country, state, county, municipality, or other political subdivision is divided for judicial, political, electoral, or administrative purposes." BLACKS LAW DICTIONARY 213 (2d pocket ed. 2001).

the remaining term of his probation.

III. CONCLUSION

Accordingly, the defendant's Motion to Travel and to Relocate is HEREBY DENIED.

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FSM SUPREME COURT TRIAL DIVISION

GAY JEAN MIGUEL, a minor through MIKEHLA)
MIGUEL, next of kin,)
)
Plaintiff,)
)
vs.)
)
FEDERATED STATES OF MICRONESIA SOCIAL)
SECURITY ADMINISTRATION,)
)
Defendant.)
_____)

CIVIL ACTION NO. 2013-008

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Beauleen Carl-Worswick
Associate Justice

Hearing: July 22, 2015
Decided: June 27, 2016

APPEARANCES:

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HEADNOTES

Civil Procedure – Summary Judgment – Grounds

A summary judgment motion will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 478 (Pon. 2016).