

Young Sun Int'l Trading Co. v. Anson
20 FSM R. 577 (App. 2016)

Membership in the Mwoalen Wahu Ileile En Pohnpei is limited to the traditional paramount chiefs of Pohnpei. The paramount chiefs are only those persons who hold the title of either Nanmwarki or Nahnken. Justice Anson's father, as Wasahi Sokehs, is not a paramount chief and is therefore not now a member of the plaintiff Mwoalen Wahu Ileile En Pohnpei, and, unless one day he attains the title of Nanmwarki Sokehs, will never be a member of that council. Accordingly, I, as "[t]he remaining article XI, section 3 justice(s) of the Federated States of Micronesia Supreme Court, acting as the appellate division," am "of the opinion that the writ clearly should not be granted," and therefore deny the petition. FSM App. R. 21(b).

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FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA,)	CRIMINAL CASE NO. 2000-1506
)	
Plaintiff,)	
)	
vs.)	
)	
HENZEL AKAPITO,)	
)	
Defendant.)	
_____)	

MEMORANDUM AND ORDER EXTENDING PROBATION

Dennis K. Yamase
Chief Justice

Hearing: July 4, 2016
Decided: July 4, 2016
Memorandum Entered: August 25, 2016

APPEARANCES:

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HEADNOTES

Criminal Law and Procedure – Sentence – Probation – Revocation

Once a probationary period has elapsed, the defendant has automatically satisfied the sentence imposed, but extended jurisdiction over a defendant is proper if the revocation process has been set in motion during the probationary period. FSM v. Akapito, 20 FSM R. 579, 581 (Chk. 2016).

Criminal Law and Procedure – Sentence – Probation – Revocation

Jurisdiction over a probationer can be extended for a violation committed during the probationary period only through the issuance of a summons, arrest warrant, or comparable court order notifying defendant of the allegations or issued before the probationary term's expiration. FSM v. Akapito, 20 FSM R. 579, 581 (Chk. 2016).

Criminal Law and Procedure – Sentence – Probation – Revocation

The court may revoke probation if it is reasonably satisfied that the probation terms were violated. FSM v. Akapito, 20 FSM R. 579, 581 (Chk. 2016).

Criminal Law and Procedure – Sentence – Probation – Revocation

If the court determines that one or more probation violations occurred but that revocation is not necessary, it will sometimes be appropriate for the court to increase the conditions under which the defendant is allowed to remain on probation. Among the possibilities is extension of the probation period, which is constitutionally permissible. FSM v. Akapito, 20 FSM R. 579, 581 (Chk. 2016).

Criminal Law and Procedure – Sentence – Probation – Revocation

Depending on how the analysis is approached, a defendant's probation was either extended seven years or his probation was revoked and then, rather than return him to jail, his probation was reinstated for seven years. Either way, the result is that the defendant will have another seven years within which to finish paying his restitution. FSM v. Akapito, 20 FSM R. 579, 581-82 (Chk. 2016).

* * * *

COURT'S OPINION

DENNIS K. YAMASE, Chief Justice:

On July 4, 2016, the court heard the government's Petition to Revoke Probation, filed September 16, 2015, and the defendant's Opposition to Petition to Revoke Probation, filed September 30, 2015. The government sought to revoke defendant Henzel Akapito's probation for his failure to make all of the \$25,000 in restitution imposed on him and his failure to make any payments after January 30, 2014. At the end of the hearing, the court orally revoked Akapito's probation, and, instead of returning him to prison, extended his probation seven years in order to allow Akapito to finish paying his restitution, by paying at least \$60 biweekly. This memorandum memorializes that order.

I.

Akapito pled guilty to and was convicted of theft against the government (11 F.S.M.C. 601), criminal mischief against the government (11 F.S.M.C. 602), tampering with public records (55 F.S.M.C. 548), and the over obligation of funds (55 F.S.M.C. 221). He was sentenced to concurrent fifteen-year terms of imprisonment, starting June 15, 2001, and that after successfully serving the first two years of imprisonment would be released on probation.

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His release on probation was subject to a number of conditions, including that he continue to make restitution payments, at a minimum of \$50 per month, until the \$25,000 restitution was paid in full, but that, if Akapito paid the full restitution amount earlier, his sentence would end then. Akapito was also permitted, once he was released from jail, to travel to Pohnpei and back under the condition that he report his arrival there to the FSM Justice Ombudsman on Pohnpei. He was also permitted to travel elsewhere if, on request, the FSM Department of Justice consented. The court clerk would then return his passport. If the Department did not consent, Akapito could then file a motion seeking the release of his passport to travel.

II.

Akapito did not keep up with the minimum payments and did not make additional payments. After Akapito made his last payment on January 30, 2014, he still owed \$18,425. The State Justice Ombudsman formally informed the Department of Justice of this by letter dated September 7, 2015. The government then filed its Petition to Revoke Probation, on September 16, 2016. On September 30, 2015, Akapito filed his Opposition to Petition to Revoke Probation, noting that he had fallen behind in his payments but that he had, in September, just managed to pay \$1,300 more toward his restitution. Akapito's sentence was otherwise due to end on June 15, 2016.

While "[i]t is well settled that once a probationary period has elapsed the defendant has automatically satisfied the sentence imposed[,] . . . it is also well settled that extended jurisdiction over a defendant is proper if the revocation process has been set in motion during the probationary period." FSM v. Edward, 20 FSM R. 335, 338 (Pon. 2016) (citation omitted). Thus, "jurisdiction over the defendant can . . . be extended for a violation committed during the probationary period, but only through the issuance of a summons, arrest warrant, or comparable court order notifying defendant of the allegations or issued prior to the expiration of the probationary term." *Id.* at 339. The State Justice Ombudsman's letter and the government's petition to revoke, accomplished that task and Akapito's opposition acknowledged his prior probation violation and argued that he had cured his violation by his late September 2015 payments.

III.

The court may revoke probation if it is reasonably satisfied that the probation terms were violated. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008). Here, the court is reasonably satisfied that Akapito violated his probation terms by making no restitution payments between January 2014 and September 2015, and that he further violated his probation by not having paid the restitution in full. Akapito, at the revocation hearing, stressed that he would continue to make his restitution payment regardless of whether his probation was revoked. The court therefore determined that Akapito had violated his probation.

"If the court determines that one or more violations of probation occurred but that revocation is not necessary, it will sometimes be appropriate for the court to increase the conditions under which the defendant is allowed to remain on probation." 6 WAYNE R. LAFAVE ET AL., CRIMINAL PROCEDURE § 26.10(d), at 897 (3d ed. 2007). "Among the possibilities is extension of the probation period, which is constitutionally permissible." *Id.* § 26.10(d), at 897 n.88. That is the case here.

IV.

Accordingly, depending on how the analysis is approached, Henzel Akapito's probation was either extended seven years or his probation was revoked and then, rather than return him to jail, his probation was reinstated for seven years. Either way, the result is that Akapito will have another seven

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years within which to finish paying his restitution. Thus, henceforth, Akapito shall pay a minimum of \$60 biweekly, which is expected to be by allotment from his state government salary. If he receives other stipends or payments, he is encouraged and expected to make additional restitution payments at those times.

If the State Justice Ombudsman certifies that Akapito's restitution has been paid in full before the seven years is up, the probation period will end right then. Until then, Akapito may continue to travel to Pohnpei under the current condition that he report his arrival there to the FSM Justice Ombudsman on Pohnpei. However, since the government has indicated that it will, as a matter of course, not approve any travel requests made by Akapito, Akapito may only travel elsewhere, if the court grants a motion requesting travel permission that he has filed and served on the government.

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FSM SUPREME COURT TRIAL DIVISION

CHUUK STATE,)	CIVIL ACTION NO. 2015-1008
)	
Plaintiff,)	
)	
vs.)	
)	
WENO MUNICIPALITY, THE FEDERATED)	
STATES OF MICRONESIA, and THE ECHEN)	
NAKAMURA LINEAGE of Iras Village, Weno)	
Island, Chuuk,)	
)	
Defendants.)	
)	

ORDER OF DISMISSAL

Dennis K. Yamase
Chief Justice

Decided: August 25, 2016

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