

appealing the entire matter then). As a general rule in an interlocutory appeal of an injunction, an appellate court will concern itself only with the order from which the appeal is taken, but will review other issues only if they are inextricably bound up with the injunction. Iriarte v. Etscheit, 8 FSM R. 231, 235 (App. 1998).

Accordingly, no stay will issue.

III. WRIT DENIED

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, although next in rank to the Nanmwarki in the Nanmwarki chiefly line, is not a paramount chief (that is, not a Nanmwarki or a Nahnken) and is therefore not a member of the plaintiff Mwoalen Wahu Ileile En Pohnpei. Young Sun states that under Pohnpeian custom and tradition, there is no such thing as the "Mwoalen Wahu Ileile En Pohnpei," that it is a recently minted phrase, that this council is not a part of traditional system, and is not recognized in the Pohnpei Constitution. In the court's view, these points do not buttress Young Sun's position, but instead further support the court's denial of Young Sun's previous petition.

Thus, as "[t]he remaining article XI, section 3 justice(s) of the Federated States of Micronesia Supreme Court, acting as the appellate division," I am "of the opinion that the writ clearly should not be granted," and Young Sun's current petition is therefore denied. FSM App. R. 21(b).

IV. CONCLUSION

Accordingly, Young Sun International Trading Company's motion for a stay and its petition for a writ of prohibition are both denied.

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FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA,	)	CRIMINAL CASE NO. 2016-502
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
BUI VAN CUA,	)	
	)	
Defendant.	)	
_____	)	

JUDGMENT OF CONVICTION AND SENTENCING ORDER

Dennis K. Yamase  
Chief Justice

Hearing: August 26, 2016  
Decided: August 26, 2016  
Entered: August 29, 2016

589  
FSM v. Bui Van Cua  
20 FSM R. 588 (Pon. 2016)

APPEARANCES:

For the Plaintiff: Craig D. Reffner, Esq.  
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For the Defendant: Lorrie Johnson-Asher, Esq.  
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HEADNOTES

Criminal Law and Procedure – Pleas

The court is not bound by the terms of a plea agreement, and, at the plea hearing, it must inform the defendant of the charges, his rights, and the maximum possible sentence, and it must ask if the guilty plea had been entered into without coercion, threats of force or other promises. FSM v. Bui Van Cua, 20 FSM R. 588, 590 (Pon. 2016).

Criminal Law and Procedure – Pleas; Criminal Law and Procedure – Sentence

Under Rule 11(e), when a plea agreement contains sentencing recommendations, the court may impose a different sentence than that proposed by the government and the parties. FSM v. Bui Van Cua, 20 FSM R. 588, 590 (Pon. 2016).

Immigration; International Law; Marine Resources

Passage by Vietnamese through the FSM territorial waters was not innocent and therefore unlawful when it was for the purpose of illegal sea cucumber harvesting, and thus it provides a sufficient factual basis for a guilty plea to entry without a permit. FSM v. Bui Van Cua, 20 FSM R. 588, 590-91 (Pon. 2016).

Criminal Law and Procedure – Sentence

A criminal defendant will be given credit for such time as he has been in the government's custody. FSM v. Bui Van Cua, 20 FSM R. 588, 591 (Pon. 2016).

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COURT'S OPINION

DENNIS K. YAMASE, Chief Justice:

On August 26, 2016, the court held a plea hearing, followed by a sentencing hearing in this matter. Assistant Attorney General Craig Reffner (Reffner) and Assistant Attorney General Robert Nakasone (Nakasone) appeared on behalf the FSM Department of Justice (Government). The defendant was present in person and represented by Public Defender Lorrie Johnson-Asher (PD). Translation into Vietnamese was made by Mr. Lam Dang, Esq. As a preliminary matter, the court stated that the

hearing for 33 similarly situated defendants, with the exception of one, would be held together.<sup>1</sup> The court stated that the charges for those defendants were identical, the plea agreements tendered were identical, the factual findings were identical and applicable to all. Upon inquiry, neither party objected to the consolidation for the purposes of this hearing.

Pursuant to FSM Criminal Rule 11(c), the court informed the defendant of his rights specifically including:

(1) the nature of the charge to which the plea is offered, and the maximum possible penalty provided by law; and

(2) that the defendant has the right to be represented by counsel at every stage of the proceeding and, if necessary, one will be appointed; and

(3) that the defendant has the right to plead not guilty or to persist in that plea if it has already been made, and the right to a trial and at that trial has the right to the assistance of counsel, the right to confront and cross-examine witnesses, and the right against compelled self-incrimination; and

(4) that if the defendant pleads guilty or nolo contendere there will not be a further trial of any kind, so that pleading guilty or nolo contendere will be a waiver of the right to a trial; and

(5) that upon a plea of guilty or nolo contendere, the court may ask questions about the offense, and if the defendant answers these questions under oath, on record, and in the presence of counsel, the answers may later be used against the defendant in a prosecution for perjury or false statement.

The court then informed the defendant that the maximum possible sentence for a violation of 50 F.S.M.C. 102, entry without a permit, was two (2) years imprisonment and a \$10,000 fine.<sup>2</sup> The court then reviewed the terms of the plea agreement, explained that the court was not bound by such terms, and asked if the plea had been entered into without coercion, threats of force or other promises. The defendants represented that the plea agreement was voluntarily and knowingly entered.

Pursuant to FSM Criminal Rule 11(e), the court explained that the agreement contained sentencing recommendations, but that the court may impose a different sentence than those proposed by the Government and the parties. The court then inquired about the factual basis for the plea. The Government represented that on June 29, 2016, the defendant was arrested off the coast of Nomwin

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<sup>1</sup> Nguyen Van Dang, in FSM Criminal Case No. 2016-502 was escorted out of the hearing, based on the fact that he had a previous conviction, and a revocation hearing is pending in that case.

<sup>2</sup> Pursuant to 50 F.S.M.C. 114(1),

[a]ny person who, not being a citizen of the Federated States of Micronesia, unlawfully enters or attempts to enter the Federated States of Micronesia or having lawfully entered, remains willfully and unlawfully after expiration or revocation of his entry authorization, or who violates by act or omission any provision of this chapter or regulations issued pursuant thereto, upon conviction thereof shall be imprisoned for a period of not more than two years, or fined not more than \$10,000, or both.

Atoll in Chuuk, within the territorial sea. The Government represented that they had probable cause to suspect the defendant of illegal sea cucumber harvesting, boarded the vessel and found sea cucumbers in the hold.<sup>3</sup> Although the defendant was not charged with illegal fishing, the court finds that the passage through the territorial waters was not innocent and therefore unlawful. Accordingly, a sufficient factual basis for the plea was presented and the court accepted the defendant's plea of guilty.

SENTENCING

After a recess, the court returned for sentencing in this matter. The defendant was asked if he had anything to say and all defendants were given the opportunity to speak. Two different defendants raised issues about the deportation procedure, including questions as to which vessel they would be allowed to return on. One defendant represented that the smaller ship was preferable because it had a stronger engine, the second defendant represented that the larger ship would be safer due to its greater capacity to accommodate the large number of passengers. The court did not determine that issue, but simply stated the Government must assist in ensuring the safe and expeditious return of the defendants. The court then announced the terms of the defendant's sentence as follows:

It is ADJUDGED that the defendant has been convicted upon his plea of guilty to Count 1 of the information as charged for entry without a permit in violation of 50 F.S.M.C. 102;

It is ADJUDGED that for this violation the defendant is sentenced to two (2) years imprisonment, all of which is suspended, on the condition that the defendant depart the FSM no later than September 1, 2016, and not return;

It is ADJUDGED that for this violation the defendant is fined \$10,000.00 and that payment of this fine may come from any interest that the defendant may have in the vessel, appurtenances and sea cucumber on board;

It is ADJUDGED that the defendant will be given credit for such time as he has been in custody of the Government, and that the pretrial release conditions would remain in effect until the defendants depart the jurisdiction.

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<sup>3</sup> It was reported that the sea cucumber was sold to prevent spoiling on the docks, and that one of the two vessels seized may also be forfeited.