

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
TRIAL DIVISION

FILED
JUL 14 2021
8:15 am
PALAU SUPREME COURT
CLERK
[Signature]

REPUBLIC OF PALAU,

Plaintiff,

v.

TOMMY E. REMENGESAU, JR.,

Defendant.

CRIMINAL CASE NO. 09-092

**ORDER DENYING
DEFENDANT'S MOTION FOR
REVOCATION OF FINE; ORDER
TO SHOW CAUSE**

Counsel for Plaintiff: A. Cripps, OSP
Counsel for Defendant: S. B. Nakamura

Before the Court is Plaintiff's Motion for Cause and Defendant's Motion for Revocation. For the reasons set forth below, Defendant's Motion for Revocation of Fine is **DENIED** and a hearing to show cause is hereby set for **August 9, 2021 at 10:00 a.m.** in Courtroom 101.

BACKGROUND

Defendant was found guilty of violating 33 PNC section 605(c)(5) for failure to disclose interests in properties and ordered to pay \$156,400.00, the value of the properties undisclosed. Defendant subsequently appealed this decision, whereby the Appellate Court affirmed the penalty. *Remengesau v. Republic of Palau*, 18 ROP 113, 124 (2011). Defendant initially paid, but later either failed to pay or paid \$100.00 installments. Plaintiff filed a Motion for an Order to Show Cause on May 28, 2021. Defendant filed an Opposing Brief on June 11, 2021, arguing that the fine is unconstitutional as well as a Motion for Revocation of Unpaid Portion of Fine, arguing that the fine is unconstitutional, erroneous, disproportionate, and excessive. Plaintiff filed an Opposing Brief on 24 June, 2021, to which Defendant filed a Reply on July 1, 2021.

ANALYSIS

A. Order for Cause

Pursuant to 17 PNC section 655(a), where a default has occurred, the Court may require Defendant to appear before the Court to explain why the default has occurred. 17 PNC §655(a). Defendant is required to show that the default was not intentional or that Defendant was attempting, in good faith, to pay. *Ibid.* The Court finds Defendant is in default of payment, because (1) no payments occurred between January 4, 2017 and April, 2021, (2) payments that have occurred since April, 2021, have been so minimal in amount that in effect fails to pay the fine, and (3) Defendant has declined to enter into a payment plan with the Special Prosecutor's Office.

Based on his Opposition Brief, Defendant has provided his reasons for not paying the fine but fails to show that the non-payment was unintentional or in exercise of a good faith desire to pay. Instead, Defendant raises unsound arguments that the Trial Court should overturn an Appellate Decision. The Court rejects arguments to overturn an appellate decision. For these reasons, Defendant is ordered to show cause why the arguments raised do not constitute a contumacious finding that may result in imprisonment absent a good faith payment plan. 17 PNC §655(c).

B. Motion for Revocation of Fine

17 PNC section 656(b) permits the Court to reconsider a fine where "circumstances which have warranted the imposition of the fine ... have changed." 17 PNC §656(b). Defendant has raised no arguments suggesting that circumstances which warranted the imposition of the fine have changed. For this reason, the motion is denied.

Instead, Defendant argues that the decision of the Appellate Court was wrong. The Appellate Court decision is clear on its review of and subsequent upholding of the sentencing:

Remengesau Jr. next takes issue with the \$156,400.00 fine. He claims that the trial court erred in imposing a fine under 33 PNC §611 based on the amount of the appraised market value of the lands involved and by imposing multiple punishments for essentially a single offense. We conclude that the penalty imposed was not a [sic] abuse of discretion.

Remengesau Jr. contends that 33 PNC § 611 contemplates a penalty for the amount not reported only where the violation is the failure to report the proper amount. He argues that because the conviction was for the failure to disclose the location and value, not for failing to state the amount paid for the land, the penalty was an error. This argument is not persuasive. The penalty scheme does not distinguish between the types of penalties. Rather, the statute simply states that the penalty for “violations of the reporting requirements” is a fine of up to three times the amount the person failed to report properly. The court held that he violated the reporting requirements. The penalty based on the amount he failed to report was proper. The Trial Division could have imposed a penalty of three times the value he did not report, but in its discretion it decided to fine only the value not properly reported. This was certainly not an abuse of discretion.

Remengesau v. Republic of Palau, 18 ROP 113, 124 (2011). Given the Appellate Court’s clarity and decision on sentencing, Defendant is asking the Trial Division to overrule the Court’s Decision. In effect, Defendant is asking to relitigate the case despite already being decided. *See generally In re lots in Iyebukel Hamlet*, 21 ROP 129, 134 (Land Ct. 2014) (Court accepted that a case was dismissed because it was already litigated on before and the principles of res judicata and stare decisis prevent relitigating). This Court is bound by the decisions of the Appellate Court and Defendant cannot relitigate a closed issue as no grounds of further appeal exist, unless Defendant can show *new* circumstances that make repayment impossible, 17 PNC §656(b), the penalty remains. *See PCSPP v. Udui*, 22 ROP 11, 17 (2014) (discussing the doctrine of ‘binding precedent’: lower courts have to follow appellate decisions); *Tengoll v. Tbang Clan*, 11 ROP 61, 64 (2004) (“determinations of the court of appeals of issues of law are binding on both the [lower]

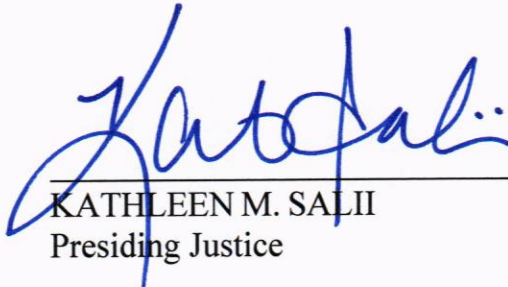
court on remand and the court of appeals on subsequent appeal.”); *Koror State Legislature v. KSPLA*, 2017 Palau 28 ¶17 (recognizing the principles of stare decisis).

Lastly, this Court declines to engage in arguments on the merits regarding excessive, erroneous, disproportionate, or unconstitutional sentencing as to do so, even in the alternative, would be tantamount to this Court reviewing the decision of an Appellate Court, which this Court cannot do.

CONCLUSION

For the foregoing reasons, Defendant’s Motion for Revocation of Fine is **DENIED**. A hearing on why Defendant’s default on payments or failure to enter into a payment plan should not be treated as contumacious is hereby set for August 9, 2021 at 10:00 a.m. in Courtroom 101. Defendant is ordered to appear.

SO ORDERED this 13th day of July, 2021.



KATHLEEN M. SALII
Presiding Justice