

TRUST TERRITORY v. SINGEO

ing rape and the Court granted motion for dismissal of Criminal Case No. 380, which was involved in these civil proceedings.

[1,2] It is emphasized for the future guidance of all Judges and Justices of the Districts and the High Courts and all District Attorneys and Public Defenders that whenever a juvenile is believed to have committed a criminal offense, the only permissible action against a juvenile 16 years of age and less than 18 years of age must be against him as a juvenile offender. The government may then move that a juvenile sixteen or older be tried as an adult, but must defer to the legal discretion of the Court as to disposition of such a motion.

[3] A further admonition is required in this matter. All Trial Division and District Courts are bound by Appellate Division decisions and are required to abide by them until they have been changed by subsequent decision or appropriate legislative action. *Elechus v. Kdesau*, 4 T.T.R. 444.

Because of the disposition of the above-mentioned criminal cases, further proceedings are not required in Civil Action No. 520 and the case is ordered closed on the records of the Clerk of Courts.

TRUST TERRITORY OF THE PACIFIC ISLANDS

v.

TOMMY SINGEO

Criminal Case No. 336

Trial Division of the High Court

Palau District

September 27, 1972

Prosecution for burglary and grand larceny. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where, in hearing on

motion to suppress, for failure to give Miranda warning, any confession, statement or evidence obtained as a result of statements, it became known that accused was subject to a suspended thirteen-year sentence for prior convictions of burglary and grand larceny, the court and the attorneys for both sides were derelict in their duties for not bringing the situation to light before trial began, but it would be a needless waste of time to start over again with a hearing on an order to show cause why suspension of sentence should not be revoked where the evidence would be the same as that already before the court on motion to suppress, and whether suspension of sentence should be revoked could properly be determined following hearing on motion to suppress.

1. Criminal Law—Suspended Sentence—Violation of Conditions

Statute providing that subsequent conviction of one on a suspended sentence has effect of revoking suspension unless court otherwise directs means that court has discretion to remand offender to jail to serve all or part of the suspended portion of the sentence, try offender for current offense and impose a sentence for that offense should conviction be had, or hold an evidentiary hearing to determine whether any conditions of suspension have been broken and if so, order revocation of the suspension. (11 T.T.C. § 1459)

2. Criminal Law—Suspended Sentence—Violation of Conditions

Under statute providing that a subsequent conviction has effect of revoking suspension of execution of sentence for a prior offense unless the court otherwise directs, a subsequent conviction is not mandatory. (11 T.T.C. § 1459)

3. Criminal Law—Suspended Sentence—Violation of Conditions

A hearing to determine whether suspension of a sentence should be revoked for breach of conditions of suspension is not an adversary or criminal proceeding, but, rather, is in the nature of an administrative hearing intimately involved with rehabilitation.

4. Criminal Law—Suspended Sentence—Violation of Conditions

In prosecution for burglary and grand larceny wherein, upon hearing on motion to suppress, for failure to give Miranda warning, any confession, statement or evidence obtained as a result of statements, it became known that accused was subject to a suspended thirteen-year sentence for prior convictions of burglary and grand larceny, the court and the attorneys for both sides were derelict in their duties for not bringing the situation to light before trial began, but it would be a needless waste of time to start over again with a hearing on an order to show cause why suspension of sentence should not be revoked where the evidence would be the same as that already before the court on motion to suppress, and whether suspension of sentence should be revoked could properly be determined following hearing on motion to suppress.

5. Criminal Law—Suspended Sentence—Violation of Conditions

Confession and seizure, under resulting search warrant, of stolen merchandise, were admissible in hearing on question whether suspension

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of probationer's prior sentence should be revoked, even if they might have been excluded in a trial on criminal charges for failure to give a Miranda warning.

6. Criminal Law—Evidence—Motion to Suppress

Hearing on motion to suppress evidence in criminal trial, in which information leading to determination to revoke suspension of prior sentence was obtained, was not a criminal trial.

Assessor:

PABLO RINGANG, *Presiding
Judge of the District Court*

Prosecutors:

PHILLIP W. JOHNSON, ESQ.,
District Attorney, Palau; and
BENJAMIN N. OITERONG,
District Prosecutor

Counsel for Accused:

J. LEO MCSHANE, ESQ.,
Public Defender, Palau; and
FRANCISCO ARMALUUK, *Public
Defender's Representative*

TURNER, *Associate Justice*

Defendant Singeo was charged by Information with the offenses of burglary and grand larceny. He plead not guilty to both charges and trial was commenced in Palau District Criminal Case No. 435. However, before the first government witness was called, the Public Defender moved to suppress any confession or other statement Singeo made to the police and to suppress any evidence obtained as a result of such statements.

An evidentiary hearing was held on this motion to suppress. Testimony was taken for three days. The grounds for the defense motion were that the accused was questioned by the police after his arrest before he was given the warnings as to his rights prescribed by the United States Supreme Court in *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, which rights and the necessity of informing a suspect of them have been partially codified in 12 T.T.C. 68.

The question turned upon (1) whether or not a promise of "help" or leniency was made by the Chief of Police in exchange for an admission of the crimes, and (2) whether the investigating officers asked questions and obtained answers before the Miranda warnings, contained in a mimeographed notice to accused, were given to Singeo.

The accused requested conference with the Public Defender's Representative upon being advised of his rights and after some delay, counsel appeared. Thereafter, accused was questioned and admitted the burglary and larceny. When called to the stand to testify for the limited purpose of the motion to suppress, the accused again confessed to the two offenses.

When the Chief of Police was on the stand, he mentioned an eight-year suspended sentence confronting the accused. Records in the Clerk of Court's Office were checked and disclosed that Singeo had plead guilty to burglary and grand larceny in this Court May 11, 1970, and had been sentenced to ten years' imprisonment (the maximum) for the burglary with the last eight years suspended on conditions. On the grand larceny charge, he was sentenced to five years' imprisonment (also the maximum) with all suspended on conditions. The two sentences were to run consecutively.

Singeo was released in May, 1972, after two years' confinement and went on thirteen years' probation, conditioned on good and lawful behavior. Two months later, July 31, 1972, he was arrested and charged with burglary and grand larceny in Criminal Case No. 435.

The Court, the prosecution and defense attorneys, and the Court personnel all were derelict in their duties in permitting trial to begin with taking of extensive testimony while the accused was under suspended sentence. To avoid a recurrence of this time-wasting procedure in this Court

or elsewhere in the Trust Territory in the future, this memorandum opinion is issued.

The authorization for imposition of suspended sentence with probation on terms of good behavior is found in 11 T.T.C. 1459. The statute also provides that: "A subsequent conviction by a court for any offense shall have the effect of revoking the suspension of the execution of the previous sentence unless the Court otherwise directs."

[1] We interpret this to mean that the Court, within its discretion, may remand the offender to jail to serve all or any part of the suspended portion of the prior sentence or it may impose a new sentence for the "subsequent conviction." Or, in the alternative, the Court may conduct an evidentiary hearing to determine whether the offender has broken any of the conditions of the suspended sentence and after hearing, the Court may order revocation without proceeding to a "subsequent conviction."

This Court's order of Singeo's suspension in 1970 included the following:

"5. If you break any of these conditions, or any part of the modifications the Court may make, after you have been released from prison, this Court or the District Court for the Palau District, after hearing, may revoke your suspension and order you committed to jail for the unexpired portion of your sentence or any part of it; and I suggest to you as an intelligent young man, that a drink of liquor or a few cans of beer is not worth spending another eight years in prison."

Singeo was eighteen years of age at that time and had plead guilty to stealing beer and liquor from the Palau District Community Club. September 22, 1972, he was twenty-one years of age, two months out of jail after two years, and admitted from the witness stand he had stolen four cases of beer and cans of chicken from Kiyoshi Anderson's Store. The Court, in 1970, overestimated Singeo's intelligence.

[2] The question remaining in Singeo's case is whether a "subsequent conviction" is mandatory under 11 T.T.C. 1459 before the Court may revoke a suspended sentence. We hold it is not because of the very nature of "revocation proceedings" as distinguished from the automatic (subject to court order) revocation after a subsequent conviction.

[3] A hearing to determine whether a suspended sentence should be revoked because of a breach of conditions of suspension is not an adversary or a criminal proceeding, *Shaw v. Henderson*, 340 F.2d 1116; *Lombardino v. Heyd*, 318 F.Supp. 648, aff'd 438 F.2d 1027; but is more in the nature of an administrative hearing intimately involved with the probationer's rehabilitation. *United States v. Johnson*, 455 F.2d 933.

In *People v. Sluder*, 246 N.E.2d 35 (Ill.) noted in *Nedrud*, the Criminal Law 1969, page G-19:

"It is not required that the defendant be indicted or prosecuted or otherwise convicted of the offenses which were the basis for the revocation of his probation. A probation revocation proceeding and a criminal proceeding are independent of one another, and the result of one has no bearing on the other."

Under the Trust Territory Code, the trial court has discretion whether to proceed with a criminal trial and impose a new sentence if the probationer is convicted of the new charge, or in the alternative, issue an order to show cause to determine whether the suspended sentence should be revoked. In this case, an order was not issued because the Court was not informed until the conclusion of the hearing on the motion to suppress that Singeo was subject to a suspended thirteen-year imprisonment. It would be a needless waste of time to start over again and hear the same evidence on an order to show cause. The technical nature of the proceeding to suppress did not deprive Singeo of due process, which requires only fair hearing. In the

future, however, the Probation Officer, the Public Defender or District Attorney, should inform the Court in connection with any criminal offense charge whether the accused is under suspended sentence.

[4] There is a considerable body of law in the United States relating to probation revocation proceedings. Most of these cases emphasize the normal rules of criminal procedure do not apply. Accordingly, the special hearing on the motion to suppress appropriately determined whether the suspended sentence should be revoked or not.

Illustrative of revocation proceedings is *United States v. Hill*, 447 F.2d 817, holding that the exclusionary rule of evidence does not apply and the Miranda warnings need not be given. *United States v. Johnson*, supra.

Also in *In re Martinez*, 79 Cal. Rptr., noted in Nedrud, 1969, page G-44, the court is quoted as holding “. . . illegally seized evidence is admissible in parole hearings and revocation proceedings.”

Particularly applicable to this case is *Ware v. State*, 219 So.2d 442 (Fla.), noted in Nedrud, 1969, page G-19, that:

“. . . the court could revoke the parole and find the defendant not guilty of the crime, as the terms of parole need not be violated with the same exactness as is required for an original conviction.”

[5] In Singeo's case, we need not reach the question whether the confession was admissible because it was made without Miranda warning or whether the search warrant by which the stolen goods were obtained was improperly issued because it was based upon information tainted by failure to give the Miranda warnings because both the confession and the seizure of the stolen beer were both admissible on the question of revocation of probation, even if they might have been excluded in the trial of the burglary and larceny charges.

[6] A revocation hearing is not a criminal trial, *Johnson v. Stucker*, 453 P.2d 35 (Kan.), nor is a hearing on a motion to suppress from which the information was obtained upon which determination to revoke the suspended sentence was made. Accordingly, it is

Ordered, that the suspended sentence of imprisonment granted in the above-captioned case be and the same hereby is revoked for a period of five (5) years from this date and shall again be suspended thereafter upon the same conditions of good behavior imposed in the original sentence.

It is Further Ordered, that because of the operation of 11 T.T.C. 7, the offenses charged in Criminal Case No. 435 be and the same are hereby dismissed.

ROBINSON HENRY, and RONNY ICHIRO, Appellants

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 378

(District Court Criminal Cases Nos. 7397 and 7398)

Trial Division of the High Court

Palau District

September 29, 1972

Appeal from denial of motions to suppress written confessions. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that confessions made, without counsel, after statement that arrested persons wished police to send for counsel, were admissible as presence of counsel had been validly waived.

1. Arrest—Request for Counsel—Subsequent Statements

An answer of "yes" by an arrested person to question whether he wishes police to send for counsel to come and see him at that time, without more, makes any subsequent statement or confession without presence of counsel inadmissible.

2. Arrest—Request for Counsel—Subsequent Statements

Where arrested persons wrote "yes" to form question whether they wished police to send word at that time for counsel to come and see