

TRUST TERRITORY v. HELGENBERGER

TRVST TERRITORY OF THE PACIFIC ISLANDS, Plaintiff

v.

ALVIS HELGENBERGER, Defendant

Criminal Case No. 90

Trial Division of the High Court

Ponape District

March 23, 1967

Petition for Modification of Judgment brought by wife of defendant found guilty of grand larceny in violation of T.T.C., Sec. 395, and sentenced to sixteen months in prison with the last seven months suspended on condition of restitution. Petitioner claims special hardship and requests clemency. The Trial Division of the High Court, Associate Justice Joseph W. Goss, held that sentence was not unreasonable and petition for clemency should be brought to High Commissioner of the Trust Territory.

Petition denied.

1. Criminal Law-Sentence-Modification

Where there are no irregularities in criminal proceedings and sentence is not unreasonable, appellate court will not modify sentence of trial court because of hardship to defendant's wife.

2. Criminal Law-Pardon and Parole

Petition for pardon or parole from sentence in criminal case should be directed to High Commissioner of Trust Territory or to District Administrator. (T.T.C., Sec. 435)

<i>Assessor:</i>	None (per stipulation)
<i>Interpreter:</i>	JUDAH C. JOHNNY
<i>Counsel for Plaintiff:</i>	TOMISIANO MARTIN
<i>Counsel for Defendant:</i>	YASUWO JOHNSON

GOSS, Associate Justice

A Petition for Modification of Judgment was filed herein by Defendant's wife and was received by the Associate Justice on October 11, 1966. Judgment in the case then being final, the petition was treated as a request on behalf of the Defendant for review on the record pursuant to Section 199 of the Trust Territory Code.

In the petition it was stated that "The petitioner has no objection with the sentence imposed by the District Court, but sought to obtain assistance from the Honorable Associate Justice in connection with a possible modification to said judgment rendered by the District Court. The petitioner submits to the Honorable Associate Justice to consider the hardship borne by the petitioner after her husband was imprisoned". This position was affirmed by defense counsel at the time of the hearing of arguments.

[1] It was pointed out to counsel that in a review of record the Trial Division of the High Court should confine itself to those items which appear in the record. In the case under review, the Defendant entered a guilty plea before the Honorable Carl Kohler to the offense of grand larceny in violation of Section 395 of the Trust Territory

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Code. Judge Kohler ordered the Defendant imprisoned for 16 months, the last seven months suspended on condition that the Defendant make restitution of \$110.00, payable at \$15.71 per month with the last payment to be \$15.74 and payments to commence one month after release from jail. It does not appear from the record, nor is it alleged that there was any irregularity in the proceedings, nor does it appear from the record that the sentence was excessive under the statute. Trust Territory Code, Section 395, provides for a maximum punishment of five years imprisonment and a fine of \$1,000.00.

[2] There is no allegation in the Petition that the sentence was in any way unreasonable, but clemency is requested because of the hardship borne by Defendant's wife after the Defendant was imprisoned. Requests for clemency, as distinguished from appeals or motions to correct specific irregularities in the record including unreasonable sentences, should be addressed to the High Commissioner or the District Administrator.

Trust Territory Code, Section 435, provides that the High Commissioner may pardon or parole upon such terms and conditions as he deems best. Trust Territory Code, Section 435(b), provides that the District Administrator shall have this authority in connection with the lesser sentences.

JUDGMENT

In consideration of the foregoing and pursuant to Trust Territory Code, Section 200, it is hereby ordered that the decision of the District Court is affirmed.