INOSENSIO ELIAS, MASAO ELIAS, & ESDAKIO DERES,
Appellants

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Appeal No. 48

Appellate Division of the High Court

Ponape District

June 18, 1974

Motion to dismiss appeal. The Appellate Division of the High Court, Burnett, Chief Justice, sitting alone, recognizing that right of appeal is a purely statutory right and that statute provided that cases tried in a district court may be appealed to the Trial Division of the High Court but, with few exceptions, not thereafter to the Appellate Division, ruled that he would deny government's statutorily correct motion for dismissal of appeal to Appellate Division where he suspected the statute denied equal protection insofar as it based right to appeal to the Appellate Division simply on whether the case was tried in the Trial Division or a district court, the two courts having concurrent criminal jurisdiction in certain cases, and stated he felt it appropriate that the statute's validity be preserved for determination by a full Appellate Division panel.

Counsel for Appellants: BENJAMIN ABRAMS
Counsel for Appellee: MINOR POUNDS

BURNETT, *Chief Justice*

Appellants were convicted of grand larceny (11 TTC § 852) in Ponape District Court. The judgment was

affirmed on appeal by the Trial Division of the High Court. Appellants then filed notice of appeal to the Appellate Division of the High Court.

The Government has moved for dismissal of the appeal on grounds the Appellate Division lacks jurisdiction, citing 5 TTC § 54, et seq.

At the outset I recognize the rule of law that the right of appeal is a purely statutorily conferred right. *Griffen v. People of State of Illinois*, 351 U.S. 12, 18, 76 S.Ct. 585, 590 (1956). Neither do I disagree that the Government is entirely accurate in its interpretation of the limited jurisdiction conferred upon the Appellate Division of the High Court by 5 TTC § 54 and other relevant statutes.

The statutory scheme for appeals provides that, with very few exceptions, cases originally in the District Court may be appealed only as far as the Trial Division of the High Court. 5 TTC § 54(1)(a). The exceptions which would otherwise grant jurisdiction are not here relevant. 5 TTC § 54(1)(b).

Though statutorily correct, I feel the motion should be denied. As I advised counsel at hearing on the motion, I am primarily troubled by the question of whether 5 TTC § 54 constitutes a denial of equal protection.

In State of Ohio ex rel. Bryant v. Akron Metropolitan Park District for Summit County, 281 U.S. 74, 50 S.Ct. 228 (1930), the Supreme Court upheld diversity of appellate jurisdiction, provided "all persons within the territorial limits of the respective jurisdictions of the state courts have an equal right in like cases under like circumstances to resort to [appellate courts] for redress." This is a rule of law dating back at least to Justice Bradley's opinion in the 1879 case of *Missouri v. Lewis*, 101 U.S. 22.

The phrase "like cases under like circumstances" connotes a requirement of uniformity in access to review based on the nature of the action and the reason for appeal.

Section 54(1)(a), however, classifies cases on the basis of the court in which they were originally heard.

The District Courts have a broad range of original jurisdiction, concurrently with the High Court. In criminal cases the District Courts' jurisdiction encompasses offenses against the laws of the Trust Territory with a maximum punishment not exceeding five (5) years imprisonment, a $2,000 fine, or both.

The right of appeal to the Appellate Division in cases within this jurisdiction depends wholly on the mere accident of the case being originally tried in the District Court or the Trial Division of the High Court. Hence, in the present case, defendant is faced with a punishment of two years' imprisonment, yet is denied appeal to the Appellate Division because the case was originally in the District Court. Yet another case involving the same offense (grand larceny) with a lesser sentence (18 months) is granted review because it was originally in the High Court. *Haruo v. Trust Territory of the Pacific Islands*, 1 T.T.R. 565.

Further, it is a matter for judicial notice that, given the staff and travel limitations within the Trust Territory, individual Districts are frequently without a sitting High Court Justice. During such a period the inclination is, and properly so, to bring an action in the District Court, the most readily available court of competent jurisdiction. In a situation of this sort, the rights of a defendant to appeal are limited, owing to circumstances wholly accidental to the statutory provisions for appellate jurisdiction.

Such discrimination, though unintended, was condemned by Judge J. Skelly Wright in *Hobson v. Hobson*, 269 F.Supp. 401 (D.D.C. 1967): "We now firmly recognize that the arbitrary quality of thoughtlessness can be as disastrous and unfair to private rights and the public interest as the perversity of a willfull scheme."

The Congress is obviously aware of the statutory limitations regarding appeals, as evidenced by specific provision for an expanded right of appeal in cases involving Land Commission determinations. 67 TTC § 115.

What is not so clear is whether Congress contemplated the operational peculiarities which affect the rights of appeal when a case which could be originally in the High Court is brought instead before the District Court.

I raise the above questions without deciding. If the appeal is to be allowed, the relevant statute must fall. I feel it only appropriate that the central question of the statute's validity be preserved for determination by a full panel of the Appellate Division of the High Court.

It is, therefore, ordered, that the Government's motion to dismiss is denied.