

**TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee**

**v.**

**INSENSIO ELIAS, MASAO ELIAS and ESDAKIO DERES,  
Appellants**

**Criminal Appeal No. 48**

**Appellate Division of the High Court**

**Ponape District**

**January 7, 1976**

Appeal following affirmation, by Trial Division of the High Court, of grand larceny conviction. The Appellate Division of the High Court, Hefner, Associate Justice, held that there is no denial of equal protection where prosecutor can bring charge in either District Court or Trial Division of the High Court and in the former instance appeal is to a single judge in the Trial Division of the High Court, while in the latter case appeal is to a three-judge panel in the Appellate Division of the High Court.

**1. Appeal and Error—Right to Appeal**

The right to appeal is a purely statutory conferred right. (5 TTC § 54)

**2. Criminal Law—Generally**

The legislature has a large measure of discretion in prescribing criminal procedure.

**3. Criminal Law—Appeals—Due Process and Equal Protection**

There was no denial of equal protection where prosecutor could prosecute in the District Court, in which case appeal would be to a single judge sitting in the Trial Division of the High Court, or could alternatively prosecute in the Trial Division of the High Court, in which case appeal would be to a three-judge panel of the Appellate Division of the High Court. (5 TTC § 54)

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Before BURNETT, *Chief Justice*, HEFNER, *Associate Justice*, WILLIAMS, *Associate Justice*

HEFNER, *Associate Justice*

The defendants-appellants were convicted of grand larceny in the District Court and appealed their convictions to the High Court. Pursuant to 5 TTC Sec. 54(2) the Trial Division of the High Court reviewed the decision of the

District Court and affirmed. The appellants next appealed to the Appellate Division of the High Court.

It is conceded that this appeal does not involve the construction or validity of the grand larceny statute. The issue which is presented then, is whether the appellants are denied equal protection under the law because they are now denied a review by a three-judge panel. If the grand larceny charge had originally been heard in the Trial Division of the High Court, there is no doubt the appeal would be to the Appellate Division of the High Court. 5 TTC Sec. 54(1).

The concern of the appellants is that the District Attorney can arbitrarily file a grand larceny charge in the District Court, thereby limiting any appellate review to a single judge sitting in the Trial Division of the High Court rather than a three-judge panel in the Appellate Division.

[1, 2] The right to appeal is a purely statutory conferred right. *Griffin v. People of State of Illinois*, 351 U.S. 12, 76 S.Ct. 585 (1956). Moreover, the legislature has a large measure of discretion in prescribing the manner of criminal procedure. *Corpus Juris Secundum*, Constitutional Law Sec. 563.

[3] The case of *Whittaker v. Superior Court of Shasta County*, 438 P.2d 358, 66 Cal. Rptr. 710 (1968), is determinative. In that case a defendant failed to obtain a three-judge panel to hear his appeal after his appeal was heard by a single judge. The California Supreme Court rejected the appellant's argument that he was denied equal protection of the law. It determined that the classification by the legislature was not of that "hostile or invidious" nature which offends the spirit of equal protection. The classification used by the legislature in California was whether a municipal court existed in the county where the criminal charge was filed. If there was no municipal court (because the population did not warrant it) the defendant

would be tried in a lower court (Justice Court) and his appeal would be to a single judge of the county Superior Court. If a municipal court existed, the appeal would be to a three-judge panel of the Superior Court.

The Court at 438 P.2d p. 369, 370 stated:

No contention is here made that the appellate review in fact received by petitioners was other than fair and impartial. The fact that they might have received a fair and impartial review of their appellate claims by three judges instead of one had their appeal originated in another county is of no consequence herein. If it be granted that fair review of lower court judgments is a constitutional requirement, there is certainly no requirement that such review assume the same form in all cases. . . .

Moreover, we reject as utterly baseless the notion that appellate review by one judge rather than three somehow partakes of *inherent* unfairness. It may well be argued that a multiple-judge panel is less susceptible to error or bias than is a single-judge appellate body but the acceptance of such an argument would fall far short of establishing that the latter variety of review is less than fair and impartial.

The appellants attempt to distinguish the *Whittaker* case by pointing out that the Trust Territory District Attorney is the one who can decide which appellate process the defendants will have by filing the case in either the High Court or District Court.

While the prosecuting attorney can file the complaint or information in either court, this does not, in any way, invalidate the appeal process. Other factors must be considered. There may not be a High Court judge available in the District and to provide the defendants a speedy trial, the case is filed in the District Court where a judge is always available. As a matter of course most grand larceny cases are filed in the District Court simply because that court has jurisdiction over the crime.

In the final analysis, the prosecuting attorney does not have the discretion to decide which appeal process the defendant shall have because the courts have the power to

transfer cases. 5 TTC Sec. 403. To accept appellants' argument would mean that this section would also have to be struck down. However, this Court cannot and does not find the sinister legislative intent appellants argue. Both 5 TTC Sec. 54 and 5 TTC Sec. 403 are for the orderly and efficient processing of cases. They are not to arbitrarily decide whether an appellant receives a single judge review or a three-judge appellate panel.

There is no contention here that the appellants did not receive a fair and impartial review by the Trial Division of the High Court and the reasoning as stated in *Whittaker* is persuasive.

Appellants have raised another issue regarding the conditions for the suspended sentence imposed on the appellants. In view of our decision that there is no further appeal from the Trial Division of the High Court, this issue shall not be considered.

The appellants' appeal is hereby dismissed.