

In re ARNET SANTOS, KIOSY MARTIN and SISILIO PRIMO  
Civil Action No. 189  
Appellate Division of the High Court  
Ponape District  
January 26, 1977

Petition for writ of habeas corpus and reinstatement of appeal. The Appellate Division of the High Court, Hefner, Associate Justice, held that where Trial Division of the High Court incorrectly dismissed appeal from District Court, Appellate Division of the High Court could not grant writ of habeas corpus; proper procedure would have been to seek writ of mandamus, and Appellate Division would construe petition as one for mandamus and order reinstatement of appeal to Trial Division.

**1. Criminal Law—Appeals—Filing Requirements**

It is clear that rule which must be applied in appeals from District Court to Trial Division of the High Court does not require a concise statement of the grounds for appeal unless demand therefor is made by appellee; and dismissal for failure to include statement would be vacated where appellee made no demand. (TT Rules Crim. Proc., R. 31)

**2. Habeas Corpus—Availability of Writ**

Where Trial Division of the High Court incorrectly dismissed appeal from District Court, Appellate Division of the High Court could not grant writ of habeas corpus; proper procedure would have been to seek writ of mandamus, and Appellate Division would construe petition as one for mandamus and order reinstatement of appeal to Trial Division.

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HEFNER, *Associate Justice*

The petitioners, Defendants in a Ponape District Court case (171-76), filed a petition for Writ of Habeas Corpus. The relief requested was two-fold. First, it is requested that the petitioners be released from custody, and secondly, that their appeal be reinstated.

The petitioners were convicted of Assault and Battery with a Dangerous Weapon in the Ponape District Court on April 1, 1976. The same day a notice of appeal was filed and a stay of execution was granted by the trial court judge. On August 19, 1976, the Trial Division of the High Court, sitting as an appeal court pursuant to Rule 31e, TTR Criminal Procedure, granted an Order extending the time for the filing of the appellate brief. The Order gave the appellants until October 29, 1976, or thirty (30) days after the trial transcript is delivered to Appellants' counsel, whichever is later.

On December 22, 1976, without notice to Appellants, the appeal to the Trial Division of the High Court was dismissed and Petitioners were incarcerated.

The reason for the dismissal of the appeal was that the notice of appeal did not comply with Rule 31, TTR Criminal Procedure. Specifically, it was found that the notice did not include a concise statement of the grounds of appeal.

[1] In appeals from the District Court to the Trial Division of the High Court, Rule 31e(3)(a) must be applied and it is clear that no concise statement is required unless a demand is made by the appellee for such a statement. No demand has ever been made and the notice of appeal is sufficient to meet the requirements of the Rule.

According to the record, the trial transcript has not been delivered to Appellants' counsel and pursuant to the Order of the Trial Division the time to file Appellants' brief has not run.

[2] Petitioners' request to have a Writ of Habeas Corpus issued is misplaced. The relief that this Court can grant is to reinstate the appeal but not release the petitioners from custody which is a matter for the Trial

Division of the High Court, sitting as an appellate court.

The petition is designated as an application for Writ of Habeas Corpus, but the proper procedure would have been to apply for a Writ of Mandamus. Since this matter was argued and the request for relief was sufficiently clear to put the District Attorney on notice, no purpose would be served in requiring a new filing and hearing along with the costs and delay resulting therefrom. The Court will therefore construe the petition as an application for Writ of Mandamus and accordingly grant relief within this Court's jurisdiction.

IT IS THEREFORE ORDERED, that the Order of the Trial Division of the High Court in which it dismissed Petitioners' appeal be vacated and set aside. Petitioners' appeal is reinstated pursuant to TTR Criminal Procedure Rule 31e and according to the provisions of the Order of August 19, 1976. The appeal will not be processed according to the 1976 Revision of the Trust Territory Court Rules as the effective date of the notice of appeal pre-dates the effective date of the new rules.

This Order is without prejudice to the petitioners to renew their motion for a stay of execution in the lower court.