

Federated States of Micronesia v. Finey

Supreme Court (Truk)

Benson A.J.

29 January 1987

Criminal procedure – sentencing – power to modify sentence after judgment – government consent to modify sentence – power of court to allow home visits.

10 *Customary law – Constitution, Article XI, clause 11 – Micronesian customs and traditions – modification of sentence.*

The defendant was sentenced to eight years' gaol in February 1983. In December 1986, the defendant returned to the sentencing court, seeking an order that his sentence be modified to allow "home visits" every Sunday to do domestic labour at his house.

15 **HELD:** By the Constitution of the Federated States of Micronesia, only the executive has the power to modify a sentence, by pardon and reprieve. Once 120 days have passed the Court is *functus officio*, and has no continuing jurisdiction respecting a lawfully imposed sentence.

OBSERVATION: The defendant relied, in part, on a constitutional reference to Micronesian customs and traditions, in Article XI, section 11: "Court decisions shall be consistent with this Constitution, Micronesian customs and traditions, and the societal and geographical configuration of Micronesia". There was no reference to any proof or to the substance of any relevant Micronesian custom or tradition.

Case referred to in judgment:

Rauzi v. Federated States of Micronesia 2 F.S.M. Intrm. 8 (Pon. 1985)

Legislation referred to in judgment:

30 F.S.M. Constitution, Article X, section 2(c) Article XI, section 11

National Criminal Code

18 U.S.C. 4082 (b) (U.S.)

C. Mulalap for the plaintiff

J. Brackett for the defendant

BENSON A.J.

Judgment:

40 This matter came before the Court on 10 December 1986 on the petition of the defendant for an order releasing the defendant each Sunday to do domestic labour at his house. The government consents.

The defendant is imprisoned for eight years pursuant to the judgment filed 4

February 1983.

As to the power of this Court to grant the petition, there is no provision in the National Criminal Code of the Federated States of Micronesia permitting the court to modify a sentence after judgment. The rules only permit the court to reduce a sentence within 120 days after the sentence is imposed.

As to the power of the executive to modify a sentence, the only power granted is that of pardon and reprieve. F.S.M. Constitution Article X, section 2(c).

50 In the United States the defendant points out the executive may have the power to parole, to reduce sentences through "good time" credit earned by the prisoner, and to extend the limits of confinement. 18 U.S.C. 4082 (b).

Because alternatives ameliorating or reducing sentences by the executive do not exist in the Federated States of Micronesia, the defendant urges the court to retain jurisdiction in criminal cases in order to respond to changing conditions during the service of sentences of imprisonment and to accommodate the needs of prisoners who have demonstrated good conduct.

60 The defendant also urges that the United States' pattern of the court losing jurisdiction after sentencing not be automatically adopted without a consideration of the suitability of such a pattern in the Federated States of Micronesia, see *Rauzi v. Federated States of Micronesia*, 2 F.S.M. Intrm. 8, 15 (Pon. 1985), and urges that the decision be consistent with Micronesian customs. F.S.M. Constitution Article XI, section 11.

The Court's attention is not directed to any other jurisdiction that permits its courts to have the continuing power to modify sentences.

The Court concludes that no authority exists for it to grant this petition and allow the home visits; it is unwilling to assume such authority.

The petition is accordingly denied.

So ordered this 29th day of January, 1987.