

JOHN SANTOS, aka JOHN PEHMOT, Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 164

Trial Division of the High Court

Ponape District

February 4, 1972

Appeal based upon claim that appellant should have been tried in juvenile proceedings. The Trial Division of the High Court, Arvin H. Brown, Jr., Associate Justice, held that under the Trust Territory Code a defendant between the ages of 16 and 18 years may be treated as an adult or may be afforded juvenile delinquent proceedings at the discretion of the court.

1. Criminal Law—Juveniles

A defendant between the age 16 and age 18 may be treated as an adult or may be afforded juvenile delinquent proceedings at the discretion of the court. (11 T.T.C. § 6; 15 T.T.C. § 1)

2. Criminal Law—Juveniles

A minor between the ages of 16 and 18 may waive his right to be tried in a juvenile court by failing to object to the jurisdiction of the court in which he was charged. (11 T.T.C. § 6)

3. Criminal Law—Juveniles

Where a defendant, being at least 16 years old, gives his age as 18 years old, the court is not charged with the responsibility of causing an independent investigation of the youth's age to be made.

4. Evidence—Hearsay

A witness may testify as to his age even though it may technically be classified as hearsay evidence.

Assessor: YOSTER CARL, *Assoc. Judge, Ponape Dist.*
Interpreter: HERBERT A. GALLEN
Reporter: ELSIE T. CERISIER
Counsel for Appellant: YASUWO JOHNSON
Counsel for Appellee: MIQUEL MARQUEZ

BROWN, Associate Justice

Appellant, John Pehmot, referred to in the court record prior to this appeal as John Santos, was charged with carrying an open container of an alcoholic beverage on a public road and drinking an alcoholic beverage while under the legal age. He pleaded guilty to the charges, and was sentenced to a fine and jail term, which was suspended on certain conditions. The appellant does not contest the judgment of the court below, or the propriety of the sentence.

Appellant sets forth two grounds of appeal. First, that the appellant did not know his own age at the time of trial. He claimed under oath to be 18 years of age. Apparently, he was 16 years of age at this time. Second, that appellant should have been tried in juvenile proceedings as made available to those less than 18 years old. (Section 6, Title 11, of the Trust Territory Code.)

[1] The relevant part of this section reads, "The provisions of this section, however, shall not prevent proceedings against and disciplining of any person under 18 years of age as a delinquent child." It is apparent from the wording that this statute does not make mandatory under all situations juvenile proceedings for those between the ages of 16 and 18 years old. It makes clear that those falling into this age group are not in every case precluded from such treatment. When considered in light of Section 1, Title 15,

Trust Territory Code, it is clear that a defendant between age 16 and age 18 may be treated as an adult or may be afforded juvenile delinquent proceedings at the discretion of the court.

[2] The burden is upon the defendant to object to the jurisdiction of the court in which he was charged. A minor between the ages of 16 and 18, as here, may waive his right to object to the jurisdiction of the court. "A minor charged in a court other than the juvenile court has been held to have waived his right to be tried in a juvenile court by failing to object to the jurisdiction of the court in which he was charged." 31 Am.Jur. 312; *State v. Klingenberger*, 149 N.E. 395; *Harris v. Alvis*, 104 N.E.2d 182. The appellant did not make a timely objection, did not request a juvenile hearing, and did not give the court any notice whatsoever that he desired to be afforded juvenile proceedings under Section 6, Title 11, of the Trust Territory Code.

[3, 4] We feel that where the defendant, in a case such as this, being at least 16 years old, gives his age as 18 years old, the court is not charged with the responsibility of causing an independent investigation of the youth's age to be made. Unless there are mitigating factors, we see no reason why the court cannot accept a witness' testimony as to his own age where it is not a relevant factor to the disposition of the case. Likewise, there is no question that a witness may testify as to his age even though it may technically be classified as hearsay evidence. "The general rule from which there seems to be little dissent, recognizes the competency of a witness to give testimony as to his own age." 39 A.L.R. 376; *Morrell v. Morgan*, 65 Cal. 575, 46 P. 915; *People v. Ratz*, 115 Cal. 132, 46 P. 915; *People v. Pribnow*, 61 Cal. App. 252, 214 P. 475.

After careful consideration of the entire record before this court, we do not feel that appellant was in any way denied substantial justice by being tried before the court as

an adult, rather than at a juvenile proceeding. We see no reason to believe that the ultimate result would have been different in any way, or that the sentence imposed was too harsh.

For these reasons, appellant's motion for a stay of execution is denied, and the judgment of the trial court is affirmed.