

**GREGORIO MARBOU, and HENRY DACHELBAI, Appellants**

**v.**

**EUSEVIO TERMETEET, Appellee**

**Civil Appeal No. 80**

**Appellate Division of the High Court**

**December 29, 1971**

Appeal from determination of bail and failure to proceed pursuant to juvenile delinquency procedure. The Appellate Division of the High Court, H. W. Burnett, Chief Justice, modified portion of appeal and held that government, in all prosecutions of persons under eighteen years, must initially prosecute under an information of delinquency.

Information quashed, bail modified.

**1. Criminal Law—Bail—Modification**

A motion for modification of bail, not habeas corpus, is the proper procedure through which to seek review of a bail determination. (12 T.T.C. § 256)

**2. Courts—High Court**

It is improper for the Trial Division of the High Court to conceive of its role as that of a reviewing court, rather than that of a trial court considering preliminary matters.

**3. Courts—High Courts**

As the Trial Division of the High Court has discretion to modify a determination of the District Court regarding bail, it was an abuse of discretion for the Trial Division to refuse to consider such matter. (12 T.T.C. § 256)

**4. Criminal Law—Bail—Determination of Amount**

With respect to the factual considerations surrounding any determination of bail, a positive showing, of record, of the factual information and considerations upon which bail decisions are based is mandatory. (12 T.T.C. §§ 251, 254, 258)

**5. Statutes—Construction—Legislative Omissions**

While a court may not remedy legislative omissions of a substantive nature, it is acceptable to eliminate vagueness or ambiguity by inferences drawn from the purposes and policies which underlie the statute.

**6. Statutes—Construction—Legislative Intent**

Court may look to the topic as a whole, in order that the disputed section may be construed most harmoniously with the whole, thus fulfilling the intent of the legislative authority.

**7. Statutes—Construction—Liberal Construction**

Considering the statute and underlying purposes, the court may construe the statutes and provisions liberally in order to best effectuate the desired progressive and humanitarian policy.

**8. Infants—Juvenile Delinquency Proceedings—Nature of Proceedings**

The ultimate aim of juvenile delinquency proceedings is to effectuate the policy against classifying juvenile offenders as "criminals". (15 T.T.C. § 3)

**9. Statutes—Construction—Legislative Intent**

Where there are rules promulgated as an administrative interpretation of, and administrative supplement to, a statutory policy, failure of the legislating authority to repudiate such an interpretation by later enactments raises a presumption in favor of the correctness of such interpretation.

**10. Statutes—Construction—Legislative Intent**

With direct notice of administrative interpretation of the statutes and past opportunities to correct or amend, through legislation, any errors on the part of the rule-making authority, inaction by the legislating authority implies validation through acquiescence.

**11. Infants—Juvenile Delinquency Proceedings—Nature of Proceedings**

Trust Territory juvenile offender laws are not intended to be criminal in nature, rather they are intended to be civil in both nature and effect and their goal is to guide and rehabilitate rather than punish. (15 T.T.C. § 1)

**12. Infants—Juvenile Delinquency Proceedings—Scope of Proceedings**

The scope of operation of the juvenile delinquency proceedings must, through necessity, be inclusive of all juveniles. (15 T.T.C. § 1)

**13. Infants—Juvenile Delinquency Proceedings—Persons Covered**

Under the Trust Territory Code all cases involving a person who has not yet attained his eighteenth birthday must be initially prosecuted under an information of delinquency. (15 T.T.C. § 1); Rules of Proc. for Juvenile Delinquency Proceedings, R. 3)

**14. Infants—Juvenile Delinquency Proceedings—Persons Covered**

Once a person is initially prosecuted under an information of delinquency, the government may elect to move for transfer to criminal proceedings, or the court may initiate such a motion, then, upon a showing of sufficient maturity, and a finding of such maturity by the court, a criminal information may be substituted for the information of delinquency and the regular criminal processes shall become operative.

MARBOU v. TERMETEET

*For the Appellants:* WILLIAM E. NORRIS, ESQUIRE, *Assistant  
Public Defender*

*For the Appellee:* JAMES E. WHITE, ESQUIRE, *District Attorney*

Before BURNETT, *Chief Justice*, MUECKE, *Temporary  
Judge* (United States District Court Judge, Sitting by  
Designation)

BURNETT, *Chief Justice*

Appellants, charged before the Trial Division of the High Court, Palau Criminal Case Numbers 379 and 380 (combined), appeared before the District Court April 13, 1971, for the purpose of having bail set. Bail was set for Appellant Marbou, charged with burglary and petit larceny, at \$200.00; bail for Appellant Dachelbai, charged as an accessory after the fact to the alleged burglary and petit larceny of Marbou, was set at \$100.00. Appellant Dachelbai moved that he be transferred and charged under juvenile offender proceedings, as he was not yet eighteen. Since the hearing was limited to consideration of bail only, 12 T.T.C. 252 and 12 T.T.C. 253, the District Court declined to consider the motion.

On April 20, 1971, appellants appeared before the Trial Division of the High Court in a habeas corpus proceeding, Palau District Civil Action Number 520. Both alleged that bail was excessive. Appellant Dachelbai further challenged the Trial Division information itself, claiming that Trust Territory Code, Title 15, Section 1, entitled him, as of right, to be initially charged only as a delinquent juvenile. The Trial Division declined to reconsider the District Court rulings as to bail, and held the initial filing of a criminal information as to Dachelbai to be lawful. Appellants now appeal the rulings of the Trial Division, alleging abuse of discretion with regard to the amount of bail, and, as to Dachelbai, error by the Trial Division in permitting the

government to elect between juvenile and adult proceedings.

## I

[1-3] A motion under 12 T.T.C. 256 (modification of bail) requesting a reconsideration or modification of bail, not habeas corpus, would have been the proper procedure through which to seek review of the bail determination. Even though the bail hearing was held before a District Court, the discretionary powers of the Trial Division as trial court remain unchanged. Since the cases were initially filed in the Trial Division, the discretion to modify any order of that Court is permanently vested in said Court. 5 T.T.C. 2, 12 T.T.C. 256. It was improper for the Trial Division to conceive of its role as that of a reviewing court, rather than that of a trial court considering preliminary matters. The Trial Division was and is obligated to exercise its judicial discretion with respect to cases properly before it. Since the Trial Division Court had discretion to modify the determination of the District Court, it was an abuse of discretion, even if derived from honest misinterpretation of the applicable statutes, for the Trial Division to refuse to consider the matter before it.

[4] The issue of the amount of bail is therefore not properly before this Court, and we do not reach or specifically consider that issue. With respect to the factual considerations surrounding any determination of bail, lack of adequate foundation for the determination is a deficiency which must be remedied. A more positive showing, of record, of the factual information and considerations upon which bail decisions are based is mandatory in all cases. All judges and Courts below are directed to closer attention to and observance of the provisions relevant to bail; 12 T.T.C. 251, 12 T.T.C. 254, 12 T.T.C. 258, and the various rules, guides and forms promulgated by the Chief Justice.

## II

Appellant Dachelbai, aged sixteen at the time of arrest and preliminary hearing, is charged under a criminal information filed by the government. At no time was he charged under an information of delinquency consistent with Trust Territory juvenile offender provisions. His hearing observed the identical procedures applied to adult offenders. He was, ab initio, treated as an adult. Defense counsel, at the time of the bail hearing, moved that appellant be handled under juvenile offender provisions. This motion was amended at a later appearance, incorrectly considered as an appeal, before the Trial Division; the amended motion challenged the initial acceptance of the criminal information by the Trial Division. Appellant claims that the Trial Division was required to apply the juvenile provisions, at least initially, to his case. Trust Territory Code, Title 15 (Juveniles) is ambiguous as to this point. The language is subject to differing interpretations, and reference is made to observing the "accepted practices of juvenile courts of the United States", 15 T.T.C. 1. The lack of clear direction in the Code, and the current misunderstanding of the principles and procedures with respect to juvenile offenders, are apparent from the District Court and Trial Division transcripts. United States juvenile court practices, to which the Code so blithely refers, prove, upon close examination, to be consistent only insofar as they reflect attempts to apply, with regard to juvenile offenders, an otherwise enlightened policy. The application of such a policy to specific instances has produced confusion with which the United States courts have often struggled. See *Ex Parte Lewis*, (Okla.), 188 P. 367. An examination of the United States authorities fails to resolve the question of choice between prosecutorial discretion and judicial discretion.

The Federal Juvenile Delinquency Act, United States Code, Title 18, Chapter 403, Sections 5031 through 5037, is an example. Section 5032, *supra*, makes specific provision for the position here adopted by the government. It is, however, worthy of note that the United States Congress felt that such discretion merited specific reference and inclusion. Were this issue of discretion so settled a proposition, there would seem little need to so clearly delineate government options. Since the Trust Territory Code neither specifies nor explicitly repudiates such discretion, it is difficult to adopt such a provision, by reference or implication, on the strength of that authority alone.

The Federal provision is contrary to the majority of State provisions brought to the attention of this Court. Annotation, 123 A.L.R. 446. State decisions construing the statutory jurisdiction and procedural requirements of State juvenile courts, whether of concurrent or exclusive jurisdiction, tend to reject the Federal approach. *Ex Parte Lewis*, *supra*; *State v. Dehler*, 89 A.L.R.2d 496; *State v. Adams*, 70 A.L.R.2d 1425; *State v. Monahan*, 48 A.L.R.2d 641; *Mill v. Brown* (Utah), 88 P. 609; *Harling v. United States* (D.C.), 295 F.2d 161; *Pee v. United States* (D.C.), 274 F.2d 556. Currently, whether through statute or decision, exclusive jurisdiction in the State juvenile courts is the majority approach for the States. Annotation, 123 A.L.R. 446. Lacking specific legislative direction, but with the problem unresolved by United States authorities, this Court must construe the Trust Territory statutes through much the same processes as followed by courts of the United States.

[5-7] As an aid in construction, interpretation, or application of an otherwise vague or ambiguous statute, there are accepted canons and principles of construction, established through decisional law and traditional usage. So, while a court may not remedy legislative omissions of a

substantive nature, it is acceptable to eliminate vagueness or ambiguity by inferences drawn from the purposes and policies which underlie the statute. 50 Am. Jur., Statutes, Sections 218, 242, and 303. We may look to the topic as a whole, in order that the disputed section may be construed most harmoniously with the whole, thus fulfilling the intent of the legislative authority. 50 Am. Jur., Statutes, Sections 247 and 306. Considering the statute and underlying purposes, we may also construe the statutes and provisions liberally in order to best effectuate the desired progressive and humanitarian policy. 50 Am. Jur., Statutes, Section 396.

[8-10] In the case before us, the best reflection of the intent of the legislation is the stated purpose contained in the Trust Territory Rules of Procedure for Juvenile Delinquency Proceedings, Rule 1. As an introduction to the specific procedural provisions, the rule states, "Juvenile delinquency proceedings are unique . . . they are a special type of civil proceeding . . . . The ultimate aim of all concerned should be to assist the child to become a wholesome member of the community." It is clear that the rule-making authority, The Chief Justice of the High Court, intended, through these rules for juvenile delinquency proceedings, to effectuate the policy against classifying juvenile offenders as "criminals", 15 T.T.C. 3. Where, as here, there are rules promulgated as an administrative interpretation of, and administrative supplement to, a statutory policy, failure of the legislating authority to repudiate such an interpretation by later enactments raises a presumption in favor of the correctness of such interpretation. This presumption is further strengthened when judicial notice is taken that the Chief Justice, promulgator of the rules and responsible for judicial enforcement of statutory provisions, 5 T.T.C. 202, sits as a member of the

Advisory Committee on the Code, Public Law 1-3, Section 3, since this multiple involvement of the Chief Justice assures that the legislating authority has clear and concise notice of any interpretation expressed through the supplementary rules. With such direct notice, and past opportunities to correct or amend, through legislation, any errors on the part of the rule-making authority, inaction by the legislating authority does imply validation through acquiescence. *Brotherhood of Maintenance of Way Employees v. United States*, 366 U.S. 169, 81 S.Ct. 913; *United States v. Shreveport Grain and Elevator Company*, 287 U.S. 77, 53 S.Ct. 42; *Allison v. United States* (Ct. of Claims), 301 F.2d 670; *State ex rel. Ball v. Ratham* (Wash.), 256 P. 330; Sutherland: Statutory Construction (1943 Ed.Supp. 1971), Chapter 51, Section 5109.

[11, 12] Trust Territory juvenile offender laws are not intended to be criminal in nature, nor are juvenile delinquency procedures criminal processes. While many safeguards are provided, there is no question that the proceedings are intended to be civil in both nature and effect. The goal is to guide and rehabilitate rather than punish. Taking the presumption of validation and the canons of construction together, the rules and statutes, to be effective in attaining the policy goals implicit in their very existence, contemplate a scope of operation which must, through necessity, be inclusive of all juveniles.

The first sentence of the disputed Code provision reads, "In cases involving juvenile offenders under the age of eighteen years, the courts shall adopt a flexible procedure based on the accepted practices of juvenile courts of the United States, including . . . .", 15 T.T.C. 1, and is thus the source of this controversy. The government argues that the section does not include all cases, but only those involving a juvenile under the age of sixteen, or cases involving a juvenile aged sixteen or older where the government



decides, as an exercise of prosecutorial discretion, not to initially file a criminal information. Appellant Dachelbai contends that all cases involving any juvenile under the age of eighteen, without exception, must begin under juvenile offender proceedings; the government may then move that a juvenile sixteen or older be tried as an adult, but must defer to the legal discretion of the Court as to disposition of such a motion. To summarize the opposing views, either the defense must establish the immaturity of the accused, or the prosecution must establish the maturity of the juvenile.

[13, 14] Where a person may be subject to the risk of criminal prosecution or conviction, yet where the legislating authorities have attempted to obviate such risk, as in the case of juvenile offenders, procedures which favor non-criminal standards are to be preferred. Trust Territory Code, Title 15, Section 1, is hereby construed to encompass all juveniles, not to be restricted to those of age sixteen or older whom the government elects, without further showing, to call juvenile. Under this construction, all cases involving a person who has not yet attained his eighteenth birthday must be initially prosecuted under an information of delinquency, as provided in Trust Territory Rules of Procedure for Juvenile Delinquency Proceedings, Rule 3. The government may elect to move for transfer to criminal proceedings, or the Court may initiate such a motion; upon a showing of sufficient maturity, and a finding of such maturity by the Court, a criminal information may be substituted for the information of delinquency and the regular criminal processes shall become operative. *Kent v. United States*, 383 U.S. 541, 86 S.Ct. 1045.

### III

It is hereby ordered that the criminal information as to Appellant Dachelbai be quashed, without prejudice to the

government in filing an information of delinquency as to Appellant Dachelbai, or further procedure not inconsistent with Part II of this opinion. That portion of this appeal concerning the amount of bail is hereby returned to the Trial Division for reconsideration as a motion for modification of bail, or further action not inconsistent with Part I of this opinion.