CHAPTER 12

Sentencing

SECTIONS

Editor's note: Former chapter 12 of this title on Weapons Control (§§1201-1232) was repealed in its entirety by PL 11-72 § 1. This new chapter 12 was enacted by PL 11-72 § 205.

§ 1201. Fines.

A person who has been convicted of a national crime, in addition to any other punishment authorized by law, may be ordered to pay a fine not exceeding:

(1) $100,000, when the conviction is for a crime punishable by a maximum of ten years imprisonment;

(2) $50,000, when the conviction is for a crime punishable by a maximum of five years imprisonment;

(3) $25,000, when the conviction is for a crime punishable by a maximum of three years imprisonment;

(4) $5,000, when the conviction is for a crime punishable by a maximum of one year imprisonment;

(5) $1,000, when the conviction is for a crime punishable by a maximum of six months imprisonment;

(6) $500, when the conviction is for a crime punishable by a maximum of 30 days imprisonment;

(7) any higher amount equal to a maximum of double the value of the loss suffered by the National Government or double the pecuniary gain obtained from the crime by the defendant; or

(8) any higher or lower amount specifically authorized by statute.

Source: PL 11-72 § 206.

§ 1202. Authorized sentences.

In any case where the court finds that the ends of justice and the best interests of the public and the defendant do not require that the maximum sentence permitted by law be imposed on a person convicted of a crime, the court may impose a sentence consisting of any one or any combination of the following; provided, however, that where a

mandatory minimum sentence is imposed by statute, the court may not impose a term of imprisonment less than that minimum:

(1) imprisonment for a term less than the maximum allowed by law;

(2) imposition of a fine as prescribed by law;

(3) suspension of a term of imprisonment and/or fine upon such reasonable conditions as shall be set by the court;

(4) suspension of imposition of sentence on such reasonable conditions as shall be set by the court;

(5) probation for a period not exceeding the maximum term of imprisonment to which the convicted person could have been sentenced upon such reasonable conditions as shall be set by the court;

(6) appropriate restitution, reparation, or service to the victim of the crime or to his or her family;

(7) confinement to a particular geographical area; and

(8) a period of community service.

Source: PL 11-72 § 207.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

Case annotations: The case annotations found throughout this title may refer to the earlier provisions of the National Criminal Code that were repealed by PL 11-72, the Revised Criminal Code. These annotations are retained for reference purposes as some of the language of the Revised Criminal Code is similar to the language of the former National Criminal Code.

A criminal sentence may be affirmed on appeal when a review of the record reveals that the sentence is appropriate. *Malakai v. FSM*, 1 FSM R. 338, 338 (App. 1983).

The statutory construction rule of lenity reflects reluctance of courts to increase or multiply punishments absent a clear and definite legislative direction. *Laion v. FSM*, 1 FSM R. 503, 528 (App. 1984).

Although the internal management of a jail or prison is, subject to compliance with constitutional requirements, a function of the executive branch, the legislature controls the overall sentencing scheme through statute. *Soares v. FSM*, 4 FSM R. 78, 82 (App. 1989).

The authority to impose consecutive punishments for different crimes can be understood to be within the powers which the legislature has implicitly granted to the court in its overall scheme of criminal law; since each crime in the criminal code carries with it a separate and distinct punishment, it is logical to infer that when a person commits multiple crimes arising from more than one act, Congress intended

that person to be punished separately for each offense. *Plais v. FSM*, 4 FSM R. 153, 155 (App. 1989).

If a defendant himself is incapable of paying restitution and he has made a request for assistance to his family, the family's bad faith in not paying cannot be imputed to the defendant and result in increased imprisonment. *Gilmete v. FSM*, 4 FSM R. 165, 166 (App. 1989).

The sentencing judge has authority to make a broad inquiry into the background of a defendant; specifically, the court may consider even cases in which the defendant was accused but not convicted. *Kallop v. FSM*, 4 FSM R. 170, 178 (App. 1989).

A sentencing judge may properly consider factors which would show trafficking of a controlled substance in a previous case, even though in the earlier case the defendant had pled guilty to possession and the trafficking charge had been dismissed. *Kallop v. FSM*, 4 FSM R. 170, 178 (App. 1989).

In the absence of authority derived from the Constitution, statutes or court rules, judges of the FSM Supreme Court are bound by their own sentencing orders arrived at through the normal exercise of criminal jurisdiction. *FSM v. Likitimus*, 4 FSM R. 180, 181 (Pon. 1990).

Trial division of FSM Supreme Ct. has no power to amend its sentences at will. *FSM v. Likitimus*, 4 FSM R. 180, 181 (Pon. 1990).

National Criminal Code does not contemplate routine application of the maximum or any other specific punishment but instead requires individualized sentencing, that is, court consideration of a broad range of alternatives, with the court's focus at all times on the defendant, the defendant's background and potential, and the nature of the offense, with the "overall objective" of the exercise of discretion being to "make the punishment fit the offender as well as the offense." *Tammed v. FSM*, 4 FSM R. 266, 272-73 (App. 1990).

In reviewing a sentencing decision of a trial court, an appellate court should follow the standards generally applied in criminal appeals, upholding findings of fact supported by credible evidence but overruling those legal rulings with which the appellate court disagrees. *Tammed v. FSM*, 4 FSM R. 266, 274 (App. 1990).

Both cumulative and concurrent sentencing are logically not mentioned in 11 F.S.M.C. 1002, because they are not alternatives to the punishments specified by the separate criminal statutes, but rather the standards from which the "authorized sentences" of 11 F.S.M.C. 1002 deviate. *Plais v. FSM*, 4 FSM R. 153, 155 (App. 1989).

Sentencing is to be individualized, and the overall objective must be to make the sentence fit the offender as well as the offense. The sentencing court's focus must be the defendant, the defendant's background and potential, and the nature of the offense. The term of imprisonment fixed in the sentence must be the time which the sentencing judge believes the convicted person justly should be required to serve. There is no justification for the sentence to include an additional factor in recognition of the possibility of parole. *Kimoul v. FSM*, 5 FSM R. 53, 60-61 (App. 1991).

Because the defendants were convicted of the crime of aggravated sexual assault, which by nature is a violent crime, especially in this case where it was random, if released there is a likelihood they would pose a danger to others in the community. But because the defendants have committed one wrongdoing in the three years since their conviction other factors are needed to require denial of stay of sentence. *FSM v. Hartman (II)*, 5 FSM R. 368, 369-70 (Pon. 1992).

Where defendants have willfully violated the court's previous order to remain confined to the Municipality of U, thus indicating a risk of flight, and where there is no substantial question of law or fact, defendants' motion for a stay of sentence pending appeal will not be granted. *FSM v. Hartman (II)*, 5 FSM R. 368, 370-71 (Pon. 1992).

Where a statute imposes a mandatory minimum fine and does not permit probation, a court cannot impose probation without violating the statute. *FSM v. Cheng Chia-W (II)*, 7 FSM R. 205, 219-20 (Pon. 1995).

Mitigating evidence cannot be used to depart below mandatory minimum penalty required by statute. A court may only consider that evidence in deciding whether minimum sentence should be enhanced. *FSM v. Cheng Chia-W (II)*, 7 FSM R. 205, 220 (Pon. 1995).

Sentencing—Pardon

The only power given to the executive to modify a sentence is the power to grant pardons and reprieves. *FSM v. Finey*, 3 FSM R. 82, 84 (Truk 1986).

Sentencing—Probation

Courts have uniformly held that sound policy requires that they be able to revoke probation for a defendant's offense committed before the sentence commences. *FSM v. Dores*, 1 FSM R. 580, 587 (Pon. 1984).

Revocation of probation of an alcohol dependent person because he consumed alcohol or because of alcohol related offenses for which he was convicted does not constitute cruel and unusual punishment in violation of the Constitution. *FSM v. Phillip*, 5 FSM R. 298, 300 (Kos. 1992).

Even if the defendant had been arrested merely for drinking alcohol the court would be compelled to return him to prison because the no-drinking condition had been imposed before the court became aware of the defendant's alcohol dependent condition and because compliance with that condition is fundamental to a proper probation. *FSM v. Phillip*, 5 FSM R. 298, 300-01 (Kos. 1992).

While the court is interested in the rehabilitation of a defendant, its greater interest is in protecting society at large from illegal conduct. When a court releases a convicted person on probation, it does so at its own discretion. Probation is a leniency granted by the court. It is not a right and revocation of probation should not be thought of as additional punishment. *FSM v. Phillip*, 5 FSM R. 298, 301-02 (Kos. 1992).

The issue of whether a defendant actually broke the law or that his arrest was unconstitutional is beyond the scope of a probation revocation hearing. The issues of whether a conviction is valid and constitutional should be taken to the appropriate court of appeals. *FSM v. Phillip*, 5 FSM R. 298, 302 (Kos. 1992).

A parole revocation hearing is significantly different than a trial. Although a court may not act capriciously in revoking probation, there is no need to establish beyond a reasonable doubt that the terms of the probation have been violated. A court may revoke probation if it is reasonably satisfied that the terms of the probation were violated. *FSM v. Phillip*, 5 FSM R. 298, 302-03 (Kos. 1992).

Prisons and Prisoners

Actions of a police officer in stripping a prisoner to punish and humiliate him, then beating him and damaging his pickup truck, constituted violation of the prisoner's constitutional rights to be free from cruel and unusual punishment and his due process rights. *Tolenoa v. Alokoa*, 2 FSM R. 247, 250 (Kos. 1986).

No authority exists for the court to grant home visits. *FSM v. Finey*, 3 FSM R. 82, 84 (Truk 1986).

Except in grave emergencies, the Director of Public Safety or any other executive branch official responsible for the administration of the jail has no inherent or implied power to exercise his own discretion, or to carry out instructions from other nonjudicial officials, in determining whether to release from jail persons ordered to be confined there. *Soares v. FSM*, 4 FSM R. 78, 79-80 (App. 1989).

There is necessarily some limited power for a jailer to release prisoners in the case of a grave emergency to protect lives or property, but the emergency power is narrow, to be exercised only when there is no opportunity to contact the proper authorities. *Soares v. FSM*, 4 FSM R. 78, 81 (App. 1989).

Although the internal management of a jail or prison is, subject to compliance with constitutional requirements, a function of the executive branch, the legislature controls the overall sentencing scheme through statute. *Soares v. FSM*, 4 FSM R. 78, 82 (App. 1989).

In the absence of legislative action saying otherwise, it is the sentencing order, not the jailer or any member of the executive branch, which determines whether the prisoner is to be confined, and for how long. *Soares v. FSM*, 4 FSM R. 78, 82 (App. 1989).

A national senator has no power to release national prisoners confined for violation of laws enacted by the national Congress. *Soares v. FSM*, 4 FSM R. 78, 83 (App. 1989).

The Joint Law Enforcement Agreement between the State of Truk and the national government in no way affects the ability of a national court to require a jailer who has accepted custody of a prisoner to act in conformity with the sentencing order governing the confinement of the prisoner. *Soares v. FSM*, 4 FSM R. 78, 84 (App. 1989).

The serious illness of a prisoner's child does not constitute an emergency necessitating the defendant's release from prison, where the child will receive the treatment she requires whether the prisoner is released or not. *FSM v. Engichy*, 4 FSM R. 177, 180 (Truk 1989).

Constitutional provisions applicable to a prisoner may vary depending on his status. A pre-trial detainee has a stronger right to liberty, which right is protected by the Due Process Clause, FSM Const. art. IV, § 3. A convicted prisoner's claims upon liberty have been diminished through due process so that person must rely primarily on article IV, section 8 which protects him from cruel and unusual punishment. *Plais v. Panuelo*, 5 FSM R. 179, 190 (Pon. 1991).

In a case where a convicted prisoner, who is also a pre-trial detainee, asserts civil rights claims arising out of ill-treatment after arrest, denial of access to family is a due process claim, and physical abuse involves due process as well as cruel and unusual punishment claims. *Plais v. Panuelo*, 5 FSM R. 179, 190 (Pon. 1991).

Deliberate indifference to an inmate's medical needs can amount to cruel and unusual punishment. *Plais v. Panuelo*, 5 FSM R. 179, 199-200 (Pon. 1991).

Where a prisoner is physically abused by an official with final policy-making authority, these acts are governmental and a statement of state policy concerning the prisoner. *Plais v. Panuelo*, 5 FSM R. 179, 207 (Pon. 1991).

Refusing to permit the public defender or the prisoner's mother to see him are violations of civil rights guaranteed under 12 F.S.M.C. 218(1) and (2) and constitute official actions for which a state must be held responsible under 11 F.S.M.C. 701(3). *Plais v. Panuelo*, 5 FSM R. 179, 207 (Pon. 1991).

Confining a prisoner in dangerously unsanitary conditions, which represent a broader government-wide policy of deliberate indifference to the dignity and well-being of prisoners, is a failure to provide civilized treatment or punishment, in violation of prisoners' protection against cruel and unusual punishment, and renders the state liable under 11 F.S.M.C. 701(3). *Plais v. Panuelo*, 5 FSM R. 179, 208 (Pon. 1991).

The national government is liable for violations of 6 F.S.M.C. 702(2) when it has abdicated its responsibility toward national prisoners. *Plais v. Panuelo*, 5 FSM R. 179, 210-11 (Pon. 1991).

A prisoner's rights to procedural due process have been violated when he received neither notice of the charges against him nor an opportunity to respond to those charges before or during confinement. *Plais v. Panuelo*, 5 FSM R. 179, 212 (Pon. 1991).

§ 1203. Custom in sentencing.

In determining the sentence to be imposed, the court shall apply subsection (6) of section 1202 of this chapter wherever appropriate, and shall otherwise give due recognition to the generally accepted customs prevailing in the

Federated States of Micronesia.

Source: PL 11-72 § 208.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

Case annotations: The case annotations found throughout this title may refer to the earlier provisions of the National Criminal Code that were repealed by PL 11-72, the Revised Criminal Code. These annotations are retained for reference purposes as some of the language of the Revised Criminal Code is similar to the language of the former National Criminal Code.

Familial relationships are an important segment, perhaps the most important component, of the custom and tradition referred to generally in the Constitution and more specifically in the National Criminal Code. FSM Const. art. V; 11 F.S.M.C. 108, 1003. *FSM v Ruben*, 1 FSM R. 34, 40 (Truk 1981).

Custom is more properly considered during sentencing than at other stages of a criminal prosecution. *FSM v. Mudong*, 1 FSM R. 135, 147-48 (Pon. 1982).

Where two statutory provisions aimed at similar types of wrongdoing and upholding citizen and public interests of the same nature would apply to a solitary illegal act, which caused only one injury, the statutes will be construed not to authorize cumulative convictions in absence of a clear indication of legislative intent. However, the government is not denied the right to charge separate offenses to guard against the risk that a conviction may not be obtained on one of the offenses. *Laion v. FSM*, 1 FSM R. 503, 529 (App. 1984).

There is no provision in the National Criminal Code of the FSM 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 has been imposed. *FSM v. Finey*, 3 FSM R. 82, 84 (Truk 1986).

The only power given to the executive to modify a sentence is the power to grant pardons and reprieves. *FSM v. Finey*, 3 FSM R. 82, 84 (Truk 1986).

Sentencing courts are not free to bar from consideration beatings that were grounded upon, or were products of custom and tradition when considering sentencing, and failure to consider the customary implications of those beatings violates not only the implicit statutory requirement of individualized sentencing, but also mandate of 11 F.S.M.C. 1003, enacted pursuant to article V, section 2 of the Constitution, as well as the judicial guidance clause. *Tammed v. FSM*, 4 FSM R. 266, 278 (App. 1990).

In the absence of legislative action saying otherwise, it is the sentencing order, not the jailer or any member of the executive branch, which determines whether the prisoner is to be confined, and for how long. *Soares v. FSM*, 4 FSM R. 78, 82 (App. 1989).

A national senator has no power to release national prisoners confined for violation of laws enacted by the national Congress. *Soares v. FSM*, 4 FSM R. 78, 83 (App. 1989).

The Joint Law Enforcement Agreement between the State of Truk and the national government in no way affects the ability of a national court to require a jailer who has accepted custody of a prisoner to act in conformity with the sentencing order governing the confinement of the prisoner. *Soares v. FSM*, 4 FSM R. 78, 84 (App. 1989).

When, before sentencing, a beating has been administered to a defendant by family and friends of the victim to punish the defendant for the crime for which he is to be sentenced, the sentencing court's refusal to consider the beatings is an inappropriate attempt to achieve a larger social purpose and an unacceptable diversion of the sentencing process when the refusal is not motivated by defendant's guilt or status but instead is an attempt to influence the future conduct of people who were not before the court and who had not committed crimes similar to those committed by defendants. *Tammed v. FSM*, 4 FSM R. 266, 276-277 (App. 1990).

When trial court is asked to give special mitigative effect to customary punishment during its sentencing proceedings, court must first consider whether these customary activities have become so imbued with official state action so that the actions of the assailants are seen as actions of the state itself; if so the punishments must be tested by the same standards that would be applied if state officials carried out these punishments directly. *Tammed v. FSM*, 4 FSM R. 266, 283 (App. 1990).

The judicial guidance clause prohibits a sentencing court from giving special effect to customary beatings administered to the defendant, unless the court finds that such recognition would be consistent with the protections guaranteed to individuals in the Declaration of Rights. *Tammed v. FSM*, 4 FSM R. 266, 284 (App. 1990).

In considering the mitigation in sentencing to be given without regard to custom because of the beatings received by the defendants, the severity of the beating is the primary consideration. *FSM v. Tammed*, 5 FSM R. 426, 428 (Yap 1990).

The court cannot give further mitigative effect in sentencing to reflect the customary nature of the beatings if the court cannot find from the evidence presented that the beatings were customary. *FSM v. Tammed*, 5 FSM R. 426, 429 (Yap 1990).

Even when mitigative effect cannot be given due to the beatings suffered by the defendants the court may consider a reduction of sentence pursuant to FSM Crim. R. 35. *FSM v. Tammed*, 5 FSM R. 426, 430 (Yap 1990).

§ 1204. Parole authorization.

Any trial justice of the National courts, or any duly appointed temporary justice thereof, is hereby authorized to review a sentence he or she imposed on a prisoner, after the prisoner has served one third of his or her sentence, and, in the case of any prisoner serving a life sentence or a sentence of 30 or more years, after said prisoner has served ten years of his or her sentence, for the purpose of determining the eligibility for parole of said prisoner. If the justice who sentenced a prisoner is not available to review the sentence, the Chief Justice may designate another justice for the

review. The justice, in doing so, shall request and consider the views of the prosecution, the prisoner and his or her counsel, the victim or head of the victim's family, and, when requested by the prosecution or the prisoner, such community leaders as clergy and municipal and village leaders. The justice shall base his or her determination upon the prisoner's behavior in prison and any factors indicative of the prisoner's chances for a successful adaptation to community life after release. The determination of the justice may be appealed only on the grounds of abuse of discretion resulting from the justice exceeding constraints imposed by this statute, rules made pursuant thereto, or the Constitution of the Federated States of Micronesia. The Chief Justice may make rules to implement this section, and in these rules may provide for a reasonable minimum waiting period between successive reviews of the same sentence.

Source: PL 11-72 § 209.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

Case annotations:

Sentencing—Parole

The National Criminal Code preserves the President's parole powers for offenses committed before the Code's effective date; the repeal of parole powers applies only to offenses committed thereafter. *Tosie v. Tosie*, 1 FSM R. 149, 151, 158 (Kos. 1982).

The parole statute, Pub. L. No. 5-24 (5th Cong., 1st Spec. Sess. 1987), does not mandate, but merely authorizes, review of sentences for the purpose of determining parole eligibility. *Yalmad v. FSM*, 5 FSM R. 32, 33 (App. 1991).

When considering parole a justice shall request and consider the views of the prosecution, the prisoner and his counsel, the victim or head of the victim's family, and, when requested by the prosecution of the prisoner, such community leaders as clergy and municipal and village leaders when determining a prisoner's eligibility for parole. The justice shall also base his determination upon the prisoner's behavior in prison and any factors indicative of the prisoner's chance for successful adaptation to community life after release. *Yalmad v. FSM*, 5 FSM R. 32, 33-34 (App. 1991).

An appeal from the decision of the trial judge may be only on grounds of abuse of discretion resulting from the justice exceeding constraints imposed by the parole statute, Pub. L. No. 5-24 (5th Cong., 1st Spec. Sess. 1987). *Yalmad v. FSM*, 5 FSM R. 32, 34 (App. 1991).

Sentencing is to be individualized, and the overall objective must be to make the sentence fit the offender as well as the offense. The sentencing court's focus must be the defendant, the defendant's background and potential, and the nature of the offense. The term of imprisonment fixed in the sentence must be the time which the sentencing judge believes the convicted person justly should be required to serve. There is no justification for the sentence to include an additional factor in recognition of the possibility of parole. *Kimoul v. FSM*, 5 FSM R. 53, 60-61 (App. 1991).

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repealed by PL 11-72, the Revised Criminal Code. These annotations are retained for reference purposes as some of the language of the Revised Criminal Code is similar to the language of the former National Criminal Code.