BAIL

FSM Appellate Rule 9's purpose is to permit a defendant held in custody, or subjected to conditions of release, to receive expedited review of that restriction of his freedom. There is no suggestion in the rule nor in any other authority indicating that the government is entitled to appeal from the pretrial release of a defendant. FSM v. Yal'Mad, 1 FSM R. 196, 198 (App. 1982).

The object in determining conditions of pretrial release is to assure the defendant's presence at trial so that justice may be done while keeping in mind the presumption of innocence and permitting the defendant the maximum amount of pretrial freedom. The FSM Supreme Court should attempt to weigh the various forces likely to motivate a defendant to stay and face trial against those forces likely to impel him to leave. FSM Crim. R. 46(a)(2). FSM v. Jonas (I), 1 FSM R. 231a, 233 (Pon. 1982).

When the highest prior bail was $1,500, imposition of bail in the amount of $10,000, on the basis of disputed and unsubstantiated government suggestions that the defendant has cash and assets available to him, would be unwarranted. FSM v. Jonas (I), 1 FSM R. 231a, 236 (Pon. 1982).

Relief from improperly set or denied bail must be speedy to be effective. In re Iriarte (II), 1 FSM R. 255, 265 (Pon. 1983).

The bearer of the title of Nahniken, by virtue of his position's deep ties to Ponapean society, may be expected to appear and stand trial if accused of crime and to submit to sentence if found guilty. Bail, therefore should be granted. In re Iriarte (II), 1 FSM R. 255, 265 (Pon. 1983).

A nahniken, just as any ordinary citizen, is entitled to bail and due process. In re Iriarte (II), 1 FSM R. 255, 272 (Pon. 1983).

Legal standards for setting bail are established by the Constitution and Criminal Procedure Rule 46. FSM v. Etpison, 1 FSM R. 370, 372 (Pon. 1983).

The FSM Supreme Court must approach the question of whether bail is "excessive" with a recognition that the defendant is presumed innocent, is to be treated with dignity, and needs a reasonable opportunity to prepare his defense. At the same time the judicial officer must keep in mind his responsibility to the public to assure that the defendant will be made to respond to the charges leveled at him. FSM v. Etpison, 1 FSM R. 370, 373 (Pon. 1983).

Once a justice certifies an accused as extraditable, the justice must then commit the person to the proper jail until surrendered. The extradition statute does not give the court the authority to release a person on bail pending any judicial review of the certification. In re Extradition of Jano, 6 FSM R. 62, 63 (App. 1993).

In an international extradition case, bail can be granted only if "special circumstances" are shown. Neither risk of flight nor the availability of a suitable custodian are primary considerations. Rather the primary consideration is the ability of the government to surrender the accused to the requesting government. In re Extradition of Jano, 6 FSM R. 62, 64 (App. 1993).

The FSM Supreme Court appellate division has no authority to review an application for release from jail pending appeal until the court appealed from has refused release or imposed conditions. Nimwes v. FSM, 8 FSM R. 297, 298-99 (App. 1998).

Because a prosecutor's assessment of probable cause is not sufficient alone to justify restraint of liberty pending trial, a preliminary hearing would be required if the defendant were to be detained pending trial or if significant restraints were to be placed on his liberty. FSM v. Wainit, 10 FSM R. 618, 622 (Chk. 2002).

The government is required to make a probable cause showing at a hearing before pretrial restraints on the defendant's liberty can be granted. This is because a fair and reliable determination of probable cause is a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest. Affidavits can be used, if properly introduced, as evidence at that hearing to make the probable cause showing. FSM v. Wainit, 10 FSM R. 618, 622 (Chk. 2002).

Because a probable cause determination is not a constitutional prerequisite to the charging decision, it is constitutionally required only for those suspects who suffer restraints on liberty other than the condition that they appear for trial. FSM v. Wainit, 10 FSM R. 618, 622 (Chk. 2002).

When an appeal was from an order revoking pretrial release and the issue on appeal was the right to pretrial release, the appellant's subsequent conviction and release makes the appeal moot. Reddy v. Kosrae, 11 FSM R. 595, 596 (App. 2003).

Failure to return a .22 rifle to a criminal defendant does not show bias when the defendant's release conditions do not allow him to possess firearms, since if the government had returned the rifle to him, he would have been put in the position of violating his own bail bond release. That is not a position the government should be permitted to put any defendant into. FSM v. Wainit, 12 FSM R. 172, 177 (Chk. 2003).

When a person is the subject of more than one criminal prosecution and has different release conditions in each case, that person must obey the most stringent of the release conditions. Likewise, if in one prosecution, the defendant is ordered held without bail, it does not matter whether in another prosecution the defendant has been released on bail or even on his own recognizance, he will be held without bail to answer the case for which he was ordered held. FSM v. Wainit, 12 FSM R. 172, 178 (Chk. 2003).

Having sought the same release conditions for a defendant in two separate prosecutions does not constitute a hopeless intertwining of the two cases. Release conditions in two otherwise unrelated cases are easily separable. FSM v. Wainit, 12 FSM R. 172, 178 & n.3 (Chk. 2003).

A defendant may appeal from an interlocutory order denying him bail. Robert v. Kosrae, 12 FSM R. 523, 524 (App. 2004).

While denial of bail because a defendant, who was charged with driving under the influence, posed a danger to the community since he might operate a vehicle under the influence at some point in the future may possibly be correct under Kosrae Criminal Procedure Rule 46(a)(1), it contravenes Kosrae State Code Section 6.401, which permits a court to deny a defendant bail

only if the defendant is intoxicated and will be offensive to the general public. Robert v. Kosrae, 12 FSM R. 523, 524 (App. 2004).

Rules of procedure generally may not abridge substantive rights created by statute. Thus, to the extent Kosrae Criminal Procedure Rule 46(a)(1) purports to abridge a defendant's right to bail under Kosrae State Code Section 6.401, the Rule is likely void and of no effect. Robert v. Kosrae, 12 FSM R. 523, 524 (App. 2004).

When the trial court's decision to deny a defendant bail under Kosrae Rule of Criminal Procedure 46(a)(1) even though Section 6.401 appears to have entitled him to bail may be error, given the likelihood that the defendant will prevail on the merits of his appeal, he may be released from incarceration pending the outcome of his appeal. Robert v. Kosrae, 12 FSM R. 523, 524 (App. 2004).

The court is obligated to set pretrial release conditions for defendants when they make their initial appearance. At an initial appearance, the court is required to, among other things, inform a defendant of his rights, including his right to retain counsel, or to request the assignment of counsel if the defendant is unable to obtain counsel, and will, if requested, direct the appointment of counsel. FSM v. Kansou, 12 FSM R. 637, 642 (Chk. 2004).

Pretrial release orders do not await the assignment of counsel. A defendant is entitled to release after his initial appearance, if at all possible, rather than face the bleak prospect of being jailed until counsel has been appointed and appeared. A defendant may seek modification of his or her pretrial release order at any time. FSM v. Kansou, 12 FSM R. 637, 642 (Chk. 2004).

A release condition that the defendants report money sent abroad is not contrary to the purpose of pretrial release conditions to ensure the defendant's appearance at trial and assure the community's safety when among the possible penalties, if convicted of the offenses charged, is the forfeiture of certain assets allegedly wrongfully acquired; when the provisions help assure that the res that might be subject to forfeiture is not transferred from its current owners or does not depart the jurisdiction – it helps assure the presence of the res; and when it is a less drastic measure than that sought by the government, which was to freeze the movants' assets and not permit any remittances abroad without prior court approval. FSM v. Kansou, 12 FSM R. 637, 643 (Chk. 2004).

When the rationale behind the reporting requirement is that potentially forfeitable assets not be spirited out of the jurisdiction and one defendant is charged with only one count of conspiracy and forfeiture of assets is not a penalty that may be imposed for conviction of that offense, his pretrial release conditions will be modified to eliminate the provisions concerning reporting funds sent abroad and restricting the sale of property. FSM v. Kansou, 12 FSM R. 637, 644 (Chk. 2004).

Criminal Rule 46(a)(1) through (6) deals with pretrial release. Rule 46(a)(1) requires the court to release a defendant "pending trial on his personal recognizance or upon the execution of an unsecured appearance bond" unless such a release will not reasonably assure the defendant=s appearance in court or the victim's or the community's protection from physical violence. FSM v. Petewon, 14 FSM R. 463, 467 (Chk. 2006).

Criminal Rule 46(c) does not apply to a person who has been sentenced to imprisonment

and has filed a notice of appeal. Criminal Rule 38(a)(2) and Appellate Rule 9 specifically apply to such situations. Criminal Rule 46 applies generally to release on bail while Criminal Rule 38(a)(2) (and by reference Appellate Rule 9) applies specifically to release pending appeal after a sentence of imprisonment has been imposed. FSM v. Petewon, 14 FSM R. 463, 467 (Chk. 2006).

Criminal Rule 46(c) is not a nullity since it applies to the release of a defendant who has been found guilty – "convicted" – but not yet sentenced. Such a defendant, although no judgment of conviction has been entered, may file a notice of appeal which will become effective once the defendant has been sentenced because a notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment is treated as filed after such entry and on the day thereof. FSM v. Petewon, 14 FSM R. 463, 467-68 (Chk. 2006).

Since a judgment of conviction must set forth the plea, the findings, and the adjudication and sentence, a judgment of conviction cannot be entered until after the defendant has been sentenced. Thus, a notice of appeal may be filed after a finding of guilty but before a judgment of conviction has been entered. Criminal Rule 46(c) applies to this time span. FSM v. Petewon, 14 FSM R. 463, 468 (Chk. 2006).

If a criminal defendant files a notice of appeal after the court publicly announced its finding of guilty but before the sentence of imprisonment is imposed and the judgment of conviction entered, the notice of appeal would become valid on the date the judgment is entered and Criminal Rule 46(c) would have applied to whether he should have been on release from when the notice of appeal was actually filed until the entry of judgment. Once a judgment of conviction imposing a sentence of imprisonment is entered, Criminal Rule 38(a)(2) and Appellate Rule 9(b) and 9(c) apply to any application for release pending appeal. FSM v. Petewon, 14 FSM R. 463, 468 (Chk. 2006).

When the medical evaluations in the file offer no assurance of safety to the defendant or to the person or property of others, the court will consider evidence of his dangerousness to himself and to the person or property of another at a hearing on fitness to proceed, and pending that hearing the defendant will remain in custody as previously ordered. Kosrae v. Charley, 14 FSM R. 470, 473 (Kos. S. Ct. Tr. 2006).

An accused's claim that he was previously put in jeopardy and is about to be tried again for the same offense is a collateral order that is immediately appealable because it is a final decision, as is the denial of an accused's motion for reduction of bail on the ground that it is unconstitutionally excessive. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 & n.2 (App. 2007).

The government must make a probable cause showing at a hearing before pretrial restraints on the defendant's liberty can be granted. This is because a fair and reliable determination of probable cause is a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest. Affidavits can be used, if properly introduced, as evidence at that hearing to make the probable cause showing. The finding of probable cause may be based on hearsay evidence. Chuuk v. Sipenuk, 15 FSM R. 262, 264-65 (Chk. S. Ct. Tr. 2007).

An appeal from bail orders brought pursuant to FSM Appellate Rule 9(a) may be heard by a

single justice of the appellate division. Nedlic v. Kosrae, 15 FSM R. 435, 437 (App. 2007).

An appeal from an order denying bail is to be determined upon such papers, affidavits, and portions of the record as the parties present, including any statement of the reasons of the court appealed from explaining the denial of release, or conditions. Nedlic v. Kosrae, 15 FSM R. 435, 437, 438 (App. 2007).

The standard of review for an appeal from an order denying bail is that the reviewing court will undertake an independent review of the detention decision, giving deference to the trial court's determination, and, if, after its independent review of the facts and the trial court's reasons, the appellate court concludes that the trial court should have reached a different result, then the reviewing court may amend or reverse the detention order, but if the appellate court does not reach such a conclusion – even if it sees the decisional scales as evenly balanced – then the trial judge's determination should stand. Nedlic v. Kosrae, 15 FSM R. 435, 437-38 (App. 2007).

Under Kosrae statute, one has a right to pretrial release on bail unless he is under the influence of intoxicating drugs and the court determines that he will be offensive to the general public. Nedlic v. Kosrae, 15 FSM R. 435, 438 (App. 2007).

The application of the Kosrae Rules of Evidence is expressly excluded from proceedings with respect to release on bail. Nedlic v. Kosrae, 15 FSM R. 435, 438 (App. 2007).

When it is demonstrably the case that bail was set for each of the appellants in the amount of $1,000, the issue on appeal is not whether they are entitled to bail, but rather the issue is whether the bail amount is excessive. Nedlic v. Kosrae, 15 FSM R. 435, 438 (App. 2007).

The protection of the victim or the community from danger or physical violence posed by a defendant is a factor the court may consider in setting or denying bail. Nedlic v. Kosrae, 15 FSM R. 435, 438 (App. 2007).

When, after the appellate court's independent review of all of the matter which it is entitled to consider under FSM Appellate Rule 9(a), along with the trial court's statement of its reasons for setting bail in the amount it did, the appellate court cannot conclude that the trial court should have reached a different result, the appellants' motions to overturn the trial court bail orders will therefore be denied. Nedlic v. Kosrae, 15 FSM R. 435, 438-39 (App. 2007).

Subsection 46(c) provides for release pending sentence and for release pending appeal. It states that a person who has been convicted of an offense and is either awaiting sentence or has filed an appeal will be treated in accordance with the provisions of Rule 46(a)(1) through (6), which provide for conditions of pre-trial release and address the nature of information supporting orders issued under the rule. Criminal Rule 46(c) does not apply to a person who has been sentenced to imprisonment and has filed a notice of appeal; it applies to the release of a defendant who has been found guilty – "convicted" – but not yet sentenced. Rule 46 applies generally to release on bail. Chuuk v. Billimon, 17 FSM R. 313, 316 (Chk. S. Ct. Tr. 2010).