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NOV 11 2011

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CLERK OF COURTS
REPUBLIC OF MARSHALL ISLANDS

IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

REPUBLIC OF THE MARSHALL ISLANDS,

v.

CHEN XIAOJIAO, aka MARY CHEN,

defendant.

) CRIMINAL CASE NO. 2010-028
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) **CONVICTION AND SENTENCING ORDER**
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APPEARANCES: Acting Attorney-General Tubosoye Brown, Chief Prosecutor
Attorney Witten T. Philippo, counsel for the defendant
Defendant Chen Xiaojiao, aka Mary Chen

JUDGE: Chief Justice Carl B. Ingram

CLERK/

REPORTER: Assistant Clerk of the Courts Hainrick Moore

I. Introduction: Charges and Verdicts

This matter came before the Court on the Republic’s November 29, 2010 Criminal Information charging the defendant with the following offenses: Count 1, Promoting Prostitution, in violation of 31 MIRC 503(3); Count 2, Promoting Prostitution, in violation of 31 MIRC 503(3); and Count 4, False Arrest, in violation of 31 MIRC 129. At the time of filing the Criminal Information, the Republic withdrew Count 3, Attempt to Promote Prostitution, and the Court dismissed Count 5, Employment of a Non-Resident Worker Without a Work Permit, at the preliminary hearing on April 8, 2011.

The defendant pled not guilty to the remaining Counts 1, 2, and 4. Pursuant to the defendant’s April 18, 2011 jury trial waiver, the case was tried to the bench from August 3 to 5, 2011.

After closing argument on August 10, 2011, the Court found the defendant guilty of Counts 1 and 2, Promoting Prostitution, but not guilty of Count 4, False Arrest. The Court's verdicts of guilty are based upon the following findings of fact.

II. Factual Background

At trial, the Court received into evidence Defendant's Exhibits A, B, and C, and the testimony of witnesses, including Lu Huihua and Xu Linfang, who the defendant compelled to compete prostitution, and Naile Louis, Chief of Labor Anjanette Kattil, Deputy Directory of Immigration Tanga Lanwi, Ajiken Lometo, Akio Paul, and the defendant. Having considered all the evidence and having assessed the credibility of the witnesses, the Court finds that the defendant enticed both Lu Huihua and Xu Linfang to come to the Marshall Islands from China with promises of jobs as housekeepers and storekeepers. However, beyond serving as housekeepers and storekeepers, the defendant compelled the women to engage in prostitution. That is, using threats of deportation the defendant compelled Ms. Lu and Ms. Xu to serve as hostesses and to engage in prostitution with the defendant's patrons at her karaoke room behind her Canton Hotel in Uliga Village, Majuro. From the money Ms. Lu and Ms. Xu collected providing sex to the defendant's patrons (\$100 to \$150 per encounter), the defendant required and received \$35 room rent per encounter and \$50 per patron.

III. Sentencing Hearing

On November 10, 2011, this matter came before the Court for sentencing. In sentencing the defendant, the Court considered the following:

1. the Court's file in this matter including the following:
 - a. the parties' September 19, 2011 Stipulated Motion to Continue Sentencing Date;
 - b. the Defendant's November 4, 2011 Motion to Modify Pre-Trial Release Order and to Continue Sentencing Date;
 - c. the Republic's November 9, 2011 Opposing Brief to Motion to Modify Pre-Trial Release Order and to Continue Sentence Date; and
 - d. the parties' November 10, 2011 Joint Recommendation of Sentence;
2. the evidence admitted at the trial;

3. the counsel's argument at the trial and at the sentencing hearing;
4. the defendant's statement at the sentencing hearing, to the effect that she has been in business in the Marshall Islands for 20 years, respects the Marshall Islands and the people, never intended to break the law, this is her first conviction, respects the law, sorry for her mistakes, was not able to be at the side of father who died this summer, wants to visit her mother who is critically ill, etc.;
5. that the defendant does not have any prior criminal record; and
6. that the maximum sentence for Promoting Prostitution is a fine not exceeding \$10,000.00, or a term of imprisonment not exceeding five years, or both.

IV. Sentence

Pursuant to Part XXIX of the Criminal Code, 31 MIRC Chp. 1, and MIRC CrP Rule 32, the Court imposes upon the defendant the following imprisonment and fines.

1. Imprisonment

- a. For Count 1, Promoting Prostitution, the defendant is sentenced to incarceration in the Majuro Jail (but if, as the Acting Attorney General states, the Majuro Jail is not suitable for the incarceration of a female prisoner, then in another facility designated by the Republic or upon house arrest) for 60 months commencing November 15, 2011, serving 12 months with execution of the remaining 48 months suspended 48 months from November 15, 2012, pursuant to 31 MIRC 189 under the conditions set forth below; and
- b. For Count 2, Promoting Prostitution, the defendant is sentenced to incarceration in the Majuro Jail for 60 months commencing November 15, 2011, serving 12 months with execution of the remaining 48 months suspended 48 months from November 15, 2012, pursuant to 31 MIRC 189 under the conditions set forth below.
- c. The above two sentences of imprisonment are to be served concurrently.
- d. Execution of the suspended sentences of imprisonment under Counts 1 and 2 is suspended under the following conditions:

- i. that the defendant comply with the rules and regulations of the place of confinement;
- ii. that the defendant timely pay to the Clerk of the Courts the fines imposed in this order;
- iii. that the defendant appear before this Court whenever and wherever called upon to do so;
- iv. that the defendant maintain contact and cooperate with defense counsel;
- v. that the defendant not leave Majuro Atoll, except with the permission of the Probation Officer and that the defendant surrender her passport to the Probation Officer; and
- vi. that the defendant keep the peace and be of good behavior (that is, the defendant obey all national laws and local government ordinances).

The defendant's failure to comply with any term of suspension may result in revocation of the suspension and in the incarceration of the defendant for the unserved portion of the sentence in the Majuro Jail. Upon the successful completion of the probation period, the defendant shall be discharged from probation.

2. Fines

- a. for Count 1, Promoting Prostitution, the defendant is fined \$2,500;
- b. for Count 2, Promoting Prostitution, the defendant is fined \$2,500.
- c. The above fines, totaling \$5,000, are due and payable to the Clerk of the Courts on or before 5:00 p.m. on December 8, 2011.

V. Disposition of Bail

With respect to the \$600.00 bail posted by the defendant, the Court orders that the bail be surrendered as part payment of the fines imposed above.

VI. Purpose of Giving Sentence

The Court's purpose in giving this sentence is as follows: (1) to discourage the defendant from ever again promoting prostitution; (2) to discourage other residents of the Republic from

promoting prostitution; (3) to confirm that promoting prostitution is not acceptable in the Republic; and (4) to encourage the defendant to change her behavior.

VII. Right to Appeal

The defendant has the right to appeal the High Court's order to the Supreme Court. If the defendant cannot afford the costs of the appeal, she may petition the Court to appeal *in forma pauperis*. Also, the defendant has the right to have an attorney represent her during the appeal process. If the defendant cannot afford an attorney, the Court will order that one be provided to her at no cost. If the defendant wishes to appeal, she must file a notice of appeal with the Court within 30 days of the date hereof.

VIII. Completion of Probation

Upon the successful completion of the probation period, the defendant shall be discharged from probation. The defendant's failure to comply with any of the terms of probation may result in her imprisonment for the suspended portion of the sentence.

IX. Surrender

The defendant shall surrender herself to the Superintendent of Prisons for incarceration on or before 5:00 p.m. on November 15, 2011.

X. Service of Order

The Court orders the Clerk of the Courts to serve, or have served, a copy of this Judgment and Sentencing Order on counsel for the parties, the defendant, the Probation Officer, and the Superintendent of Prisons.

Date: November 11, 2011.



Carl B. Ingram
Chief Justice