

**IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS**

REPUBLIC OF THE MARSHALL ISLANDS)	CRIMINAL CASE NO. 2011-028
)	
)	
v.)	
)	ORDER DISMISSING CASE
RONDIO JOMULY,)	
)	
Defendant.)	
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TO: Assistant Attorney-General Jack Jorbon, Prosecutor
Attorney Scott Stege, counsel for the defendant

On December 7, 2011, this matter came before the Court for a preliminary hearing on the Republic's March 15, 2011 Criminal Information charging the defendant with 11 counts: 8 counts of Grand Larceny, one count of Cheating, one count of Possession or Removal of Government Property, and one count of Conspiracy. Counsel for the Republic was not, however, prepared to proceed. He requested an extension of time. The defendant did not consent to the extension. For the reasons set forth below, the Court dismisses this case without prejudice.

The facts and the law, do not permit the Court to grant the Republic's request for an extension of time.

On March 28, 2011, the Court held an initial appearance in this case. Since that date, the Court upon stipulation by counsel scheduled and twice re-scheduled the date for the preliminary hearing. The continuances were requested by the Republic and agreed to by the defendant. The

Court and defense counsel have been flexible. Today's hearing date is 254 days after the initial appearance. The defendant objects to any further delay.

Under Rule 5.1(c) of the Marshall Islands Rules of Criminal Procedure, the Court "must" hold the preliminary hearing within a reasonable time after the initial appearance, but no later than 14 days if the defendant is in custody and no later than 42 days if not in custody. In this case, the defendant has not been held in custody, so the 42-day rule applies. However, under limited circumstances extensions of time are permitted.

Under Rule 5.1(d), the Court, with the defendant's consent and upon a showing of good cause, may extend the time for the hearing. However, if the defendant does not consent (as is the case here), the Court may only extend the time for the preliminary hearing upon a showing that "extraordinary circumstances exist and justice requires the delay." The Republic has failed to make such a showing.

According to counsel for the Republic, the reason the Republic is not prepared to proceed today is that since he went on leave at the end of July 2011, the Office of the Attorney General has been in a state of chaos. Even if this is true (and the Court does not find that it is), counsel offered no authority to support his claim that dissension or inadequate staffing within the prosecutor's office justifies the delay. The Court finds that under the circumstances known to the Court, 254 days is more than enough time for the Republic to prepare for the preliminary hearing.¹ Further delay is neither reasonable nor permitted by law.

¹Three times after counsel for the Republic went on leave at the end of July, members of his office requested, and were granted, continuances. The Court presumes they were fully aware of the constraints the office faced when they agreed to the hearing dates. No evidence was presented to the contrary.

Accordingly, the Court dismisses this case without prejudice. Further the Court orders that the Clerk of the Courts exonerate the defendant's bail and return to the defendant his passport.

Date: December 7, 2011.

A handwritten signature in black ink, appearing to read 'C. Ingram', written over a horizontal line.

Carl B. Ingram
Chief Justice, High Court