

Law Revision

11-9-99

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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN)
MARIANA ISLANDS,)
)
Plaintiff,)
)
v.)
)
GUO LIN ZHANG,)
)
Defendant.)

Criminal Case No. 99%¹1B

ORDER DENYING
DEFENDANT'S MOTION
FOR JURY TRIAL

I. PROCEDURAL BACKGROUND

This matter came before the Court on October 20, 1999, in Courtroom 217A of the Guma Hustisia Defendant Guo Lin Zhang's motion for jury trial. Marvin J. Williams, Esq. appeared on behalf of Plaintiff. John F. Cool, Esq. appeared on behalf of Defendant Guo Lin Zhang. The Court, having reviewed the memoranda, declarations, and exhibits, having heard and considered the arguments of counsel, and being fully informed of the premises, now renders its written decision.

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FOR PUBLICATION

AG - Marvin
John Cool

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II. FACTS

On July 16, 1999, the Office of the Attorney General filed a criminal information charging Defendant Guo Lin Zhang (“Defendant”) with one count of promoting prostitution in the second degree in violation of 6 CMC § 1344(a).

On October 6, 1999, Defendant filed the instant motion for jury trial contending that the \$2,000 mandatory fee assessment provision as provided in Public Law 11-19 is actually a “fine” which, when totaled with the original statutory \$1,000 fine in 6 CMC § 1346(c), exceeds the \$2,000 fine threshold for a right to jury trial under 7 CMC § 3 101.

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III. ISSUES

1. Whether the \$2,000 mandatory fee assessment as provided under Public Law 11-19 can be classified as a “fine” entitling Defendant to a jury trial?

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IV. ANALYSIS

A. Public Law 11-19

7 CMC § 3 101, which provides the criteria for the right to a jury trial, states in pertinent part:

“Any person accused by information of committing a felony punishable by . . . more than \$2,000 fine . . . shall be entitled to a trial by jury of six persons. ”

6 CMC § 1346(c), as amended by Public Law 11-19^{1/}, provides the following penalties for a conviction of promoting prostitution in the 2nd degree:

“Every person who is found guilty of promoting prostitution in the second degree . . . shall be subject to imprisonment for no more than five years or a fine of not more than \$1,000 or both, for each violation.^{2/}”

Additionally, Public Law 11-19 amended 6 CMC § 1346 to provide a mandatory fee assessment of \$2,000 for persons who are either convicted or given deferred sentences as a result of being arrested for promoting prostitution. Public Law 11-19, § 6; 6 CMC 1346(e).

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^{1/}Public Law 11-19 was enacted on July 9, 1998.

^{2/}Prior to the amendment by Public Law 11-19, the penalties for promoting prostitution in the 2nd degree were a maximum of five years imprisonment and a maximum fine of \$10,000. 6 CMC § 1346(b).

1 B. Fine

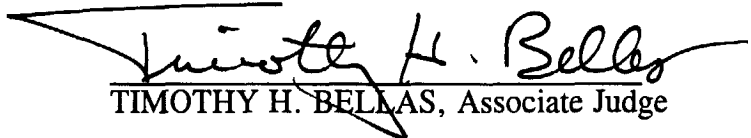
2 Defendant contends that he is entitled to a jury trial because the \$2,000 mandatory fee
3 assessment under Public Law 11-19 is actually a “fine” whose amount, when combined with the
4 original \$1,000 statutory fine, exceeds the \$2,000 jury trial threshold under 7 CMC § 3101.

5 Here, neither the term “fine” nor “fee” is defined in the Commonwealth Code. Therefore,
6 to resolve this issue the Court finds it appropriate to look to federal criminal statutes which impose
7 similar assessments upon defendants convicted of certain crimes. One such example is 18 U.S.C. §
8 3013, which requires the court to impose a mandatory special assessment similar to that of Public Law
9 11-19 on defendants convicted of felonies and misdemeanors committed against the United States.^{3/}
10 Under this statute, it has been held that a special assessment levied upon a convicted defendant is not
11 a “fine”. United States v. Hurtado, 899 F.2d 371, 376 (5th Cir.1990). Therefore, in accord with the
12 Hurtado decision, the Court finds that the \$2,000 mandatory fee assessment under Public Law 11-19
13 is not a fine. As such, Defendant is not entitled to a jury trial under 7 CMC § 3101 since the
14 maximum fine at issue is less than \$2,000.

15 V. CONCLUSION

16 For all the reasons stated above, Defendant’s motion for jury trial is **DENIED**.

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18 So ORDERED this 09 day of November, 1999.

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21 TIMOTHY H. BELLAS, Associate Judge

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26 ^{3/}By comparison, the assessments levied under 18 U.S.C. § 3 101 are used to assist and compensate
27 crime victims whereas the assessments under P.L. 1 1-1 9 are used to provide additional funding for the
28 enforcement of anti-prostitution laws.