

CHRISTIAN NGIRAKED, Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee
Criminal Appeal No. 44
Appellate Division of the High Court
Palau District
September 11, 1974

Appeal from conviction of burglary and grand larceny. The Appellate Division of the High Court, Hefner, Associate Justice, held that unperfected appeal would be dismissed.

Appeal and Error—Notice and Filing of Appeal

Where notice of appeal did not, as required by rule, make a concise statement of the grounds for appeal, and brief had not been filed despite grant of various extensions to file it, appeal would be dismissed. (Rules Crim. Proc. 31, 32(d))

Counsel for Appellant: J. LEO MCSHANE; JOHN O. NGIRAKED

Counsel for Appellee: PHILLIP JOHNSON

Before BURNETT, *Chief Justice*, TURNER, *Associate Justice*, and HEFNER, *Associate Justice*

HEFNER, *Associate Justice*

The defendant was convicted of burglary and grand larceny on February 13, 1973. A notice of appeal was filed on February 22, 1973, which stated that the grounds of appeal were "to be filed in accordance with Rule 31 of the Rules of Criminal Procedure."

Rule 31 specifies that the notice of appeal shall set forth a concise statement of the grounds on which the appeal is taken. This requirement was not met by appellant and the record fails to indicate in any way what the grounds for appeal are.

Appellant also requested various time extensions to file his brief, and although his requests were granted extend-

ing the time to file to August 5, 1973, no brief has ever been filed.

It is abundantly clear the appellant has failed to perfect his appeal, and the same is hereby dismissed pursuant to Rule 32(d), Rules of Criminal Procedure.

PIO ONA, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Appeal No. 41

Appellate Division of the High Court

Truk District

September 30, 1974

Prosecution for rape. The Appellate Division of the High Court, Hefner, Associate Justice, held that force existed even though it was not applied during the whole time of the commission of the offense and did not exist during the time of penetration.

1. Rape—Elements—Unlawful Intercourse

Unlawful sexual intercourse with a female not the wife of the accused, an element of rape, was established where the complainant and defendant both testified that they were not married and had had sexual intercourse. (11 TTC § 1302)

2. Rape—Elements—Force

Sexual intercourse was against rape complainant's will and by force, two of the necessary elements of rape, where trial court believed complainant's testimony that she was thrown to the ground, her clothes ripped and she was forced, though she struggled, and testimony that she tearfully reported the incident to her mother. (11 TTC § 1302)

3. Appeal and Error—Instructions—Non-Jury Cases

Any erroneous oral interpretation of rape statute by court at trial before the judge without a jury was cured where it was corrected in the later written opinion.

4. Appeal and Error—Evidence—Weight

Court to which rape conviction was appealed would not reweigh the evidence.

5. Rape—Elements—Force

Force, an element of rape, need not be applied during the whole course of the commission of the offense before it can be found to have occurred.