

**COMMONWEALTH OF THE
NORTHERN MARIANA
ISLANDS**

vs.

Joon Chul AHN

**Appellate Action No. 86-9024
Civil Action No. 86-26
District Court NMI
Appellate Division**

Decided July 28, 1986

1. Appellate Procedure - Stays

A substantial question for the purpose of granting a stay of execution of sentence pending appeal is one that poses an issue debatable among jurists of reason. Dist. Court R. App. P. 5(a).

2. Appellate Procedure - Stays

Where issue before the Court is novel, no precedent is known, and its resolution is fairly debatable, appellant's motion for a stay of execution of sentence pending appeal would be granted. Dist. Court R. App. P. 5(a).

FILED
Clerk
District Court

JUL 28 1986

For The Northern Mariana Islands

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

APPELLATE DIVISION

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5 COMMONWEALTH OF THE NORTHERN)
MARIANA ISLANDS,)
6 Plaintiff-Appellee,)
7 vs.)
8 JOON CHUL AHN,)
9 Defendant-Appellant.)
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DCA NO. 86-9024
CTC NO. 86-26

DECISION AND ORDER

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12 This matter came before the Court on July 23, 1986, for
13 hearing of defendant-appellant's motion for stay of execution of
14 sentence pending appeal, pursuant to Rule 5(a) of this Court's
15 Rules of Appellate Procedure.

16 The only issue facing the Court at this time is whether
17 any of appellant's claims raises a substantial question of law,
18 thereby justifying the requested stay.

19 [1] A "substantial question" is one that poses an issue
20 "debatable among jurists of reason." Barefoot v. Estelle, 463
21 U.S. 880, 893, 103 S.Ct. 3383, 3393-94, 77 L.Ed.2d 1090 (1983),
22 at n.4, quoting Gordon v. Willis, 526 F.Supp. 911, 913 (N.D.Ga.
23 1980). The Ninth Circuit in United States v. Handy re-stated
24 this to require that an issue be "fairly debatable" or "fairly
25 doubtful." Handy, 761 F.2d 1279, 1283 (9th Cir. 1985). Another
26 circuit has stated that the test is met if the question "is one

1 which is either novel, which has not been decided by controlling
2 precedent, or which is fairly doubtful." United States v.
3 Miller, 753 F.2d 19, 23 (3rd Cir. 1985).

4 Appellant contends that his rights to due process and
5 equal protection of the laws were violated when the judge, who
6 tried the misdemeanors, and the jury, which decided the felonies,
7 reached inconsistent verdicts on charges allegedly requiring
8 identical findings of fact. Appellant indeed may be correct to
9 characterize this as a case of first impression. Neither the
10 Court nor either party has yet been able to find precedent for
11 this situation.

12 The Commonwealth of the Northern Mariana Islands is
13 unique in its structuring of jury trials in criminal cases.
14 Title 7 of the Commonwealth Code, Section 3101, provides that a
15 criminal defendant is entitled to a trial by jury only if he or
16 she faces imprisonment of five or more years and/or a fine of
17 more than \$2,000. This provision, although significantly
18 different than those found within the fifty states, as of this
19 date has been found to not violate a defendant's right to a jury
20 trial under the Sixth Amendment to the U.S. Constitution. CNMI
21 v. Atalig, No. 83-1094X, slip op. at 221-224 (9th Cir. January
22 11, 1984).

23 Rather than allow the jury to try all the charges, the
24 trial judge reserved the decision by himself of those charges for
25 which maximum imprisonment was less than five years and/or a fine
26 of less than \$2,000. Neither party, apparently, foresaw the

1 possibility of inconsistent verdicts between two different triers
2 of fact - the trial judge and the trial jury - in the same trial
3 and on the same evidence. No steps, therefore, were taken to
4 forestall such an occurrence. Indeed, another issue well may be
5 whether or not appellant's claimed defects were waived by failure
6 to object.

7 [2] The issue before the Court is novel, no precedent is
8 known, and its resolution is fairly debatable. And in a
9 jurisdiction where an alleged criminal is denied a jury trial
10 even though he faces incarceration of up to but less than five
11 years, resolution of this issue is significant. Therefore,
12 appellant's motion for stay is hereby GRANTED, subject to the
13 restrictions placed upon defendant by the trial court.

14 This decision addresses only one of the issues raised
15 by appellant. The fact that this Court finds that a substantial
16 question of law has been raised by the inconsistent verdicts is
17 not intended to and should not be construed as a comment on the
18 merit of either this issue or the other arguments forwarded by
19 appellant but not mentioned herein.

20 IT IS SO ORDERED.

21 DATED this 28th day of July, 1986.
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26 JUDGE ALFRED LAURETA