

IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

FILE

REPUBLIC OF THE MARSHALL
ISLANDS,

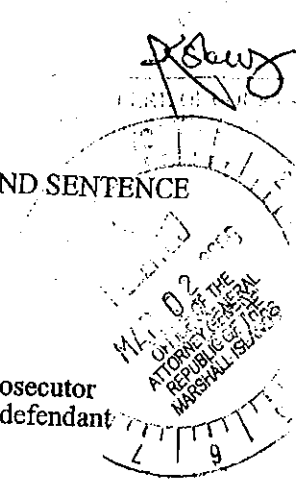
v.

JAMES CAPELLE,

Defendant.

CRIM. CASE NO. 2005-047

ORDER OF CONVICTION AND SENTENCE



APPEARANCES : Assistant Attorney-General Whitlam K. Togamae, the prosecutor
Chief Public Defender Lionel Aingimea, counsel for the defendant
Defendant James Capelle

JUDGE : Chief Justice Carl B. Ingram
CLERK : Assistant Clerk of the Courts Ingrid Kabua
COURT REPORTER : Assistant Clerk of the Courts Sepe Joash

On February 23, 2006, this matter came before the Court on the Republic's September 29, 2005 Criminal Information charging the defendant James Capelle with the following: Count 1, Aggravated Assault, 31 MIRC 114; Count 2, Assault and Battery with a Dangerous Weapon, 31 MIRC 116; Count 3, Assault and Battery, 31 MIRC 115; Count 4, Assault, 31 MIRC 113; Count 5, Robbery, 31 MIRC 150; Count 6, Petit Larceny, 31 MIRC 136; Count 7, Drunk and Disorderly Conduct, 31 MIRC 124; Count 8, Disturbing the Peace, 31 MIRC 122; and Count 9, Malicious Mischief, 31 MIRC 144(b).

Defense counsel and the prosecutor advised the Court that the defendant desired to plead guilty to four counts: Count 3, Assault and Battery; Count 6, Petit Larceny; Count 7, Drunk and Disorderly Conduct; and Count 9, Malicious Mischief. The defendant did so plead under the following plea agreement between the Republic and the defendant:

1. the defendant pleads guilty to four counts: Count 3, Assault and Battery; Count 6, Petit Larceny; Count 7, Drunk and Disorderly Conduct; and Count 9, Malicious Mischief; and
2. the Republic dismisses five counts: Count 1, Aggravated Assault; Count 2,

Assault and Battery with a Dangerous Weapon; Count 4, Assault; Count 5, Robbery; and Count 8, Disturbing the Peace; with

3. the sentence to be determined by the Court.

After reading the defendant's Entry of Plea or Change of Plea Form and after questioning the defendant, defense counsel, and the prosecutor regarding the entry of the plea of guilty and the plea agreement, the Court made the following findings:

1. the defendant understands and knowingly and intelligently waived his trial rights;
2. the defendant's waivers and pleas were freely and voluntarily made;
3. the defendant understood the consequences of the pleas; and
4. there is a factual basis for the plea of guilty to Counts 3, 6, 7 and 9.

The defendant was given an opportunity to make a statement prior to sentencing.

The defendant having entered a plea of guilty to Counts 3, 6, 7 and 9 knowingly and voluntarily, with full appreciation of the consequences of such pleas and the rights waived, and the Court having found a factual basis for the plea, the Court accepts the defendant's plea of guilty and finds the defendant guilty and convicts the defendant of Count 3, Assault and Battery; Count 6, Petit Larceny; Count 7, Drunk and Disorderly Conduct; and Count 9, Malicious Mischief. Pursuant to the plea agreement, the Court dismisses the following counts: Count 1, Aggravated Assault; Count 2, Assault and Battery with a Dangerous Weapon; Count 4, Assault; Count 5, Robbery; and Count 8, Disturbing the Peace.

In sentencing the defendant, the Court has considered the following: the Court's file in this matter; the statements made by counsel and the defendant at the February 23, 2006 plea hearing; the submissions by counsel at the February 28, 2006 sentencing hearing; aggravating factors (e.g., the defendant hit the victim with a metal stool thrown at close range, the victim is a woman, she could have been severely injured, the assault was unprovoked, the defendant is a large man, and the defendant is a community leader) and mitigating factors (e.g., the defendant apologized and paid restitution to the victim, returned the stolen money, and expressed remorse); and the maximum sentences for the offences (misdemeanors) to which the defendant plead

guilty.

Pursuant to Part XXIX of the Criminal Code, 31 MIRC Chp. 1, and Rule 32 of the Marshall Islands Rules of Criminal Procedure, the Court sentences the defendant as follows:

<u>Counts</u>	<u>Plea</u>	<u>Court Finding and Adjudication</u>	<u>Imprisonment in the Majuro Jail</u>	<u>Fine</u>
Count 3 Assault and Battery	Guilty	Guilty	Six Months	\$100.00
Count 6 Petit Larceny	Guilty	Guilty	Six Months	\$100.00
Count 7 Drunk and Disorderly	Guilty	Guilty	Six Months	\$ 50.00
Count 9 Malicious Mischief	Guilty	Guilty	Six Months	\$100.00

The sentences for Counts 3 and 6 shall run consecutively commencing at 5:00 p.m. on March 1, 2006, and ending 5:00 p.m. on February 28, 2007. The sentence for Count 7 shall run concurrently with the sentence pronounced for Count 3, and the sentence for Court 9 shall run concurrently with the sentence pronounced for Court 6.

The defendant is ordered to surrender himself to the custody of the Superintendent of Prisons on or before 5:00 p.m. March 1, 2006, to serve the one-year sentence of imprisonment to be released at 5:00 p.m. on February 28, 2007. If the defendant fails to surrender himself as ordered, he shall be subject to arrest and the bail posted for his pre-trial release, \$1,000.00, forfeited. If the defendant does surrender himself as ordered, the Court orders that the bail be exonerated less \$350.00 for the fines imposed above, and \$625.00 for the fines and restitution imposed in Criminal Case No. 2005-048, which the defendant has agreed to pay from the bail posted in this case.

The Court's purpose in giving this sentence is as follows: (1) to discourage the defendant from ever committing such assaultive behavior again; (2) to discourage other residents of the Republic from committing assault; (3) to confirm that the commission of assault is not acceptable in the Republic; (4) to encourage the defendant to change his behavior; and (5) to

vindicate the victims' rights.

The defendant waived his right to appeal errors to the Supreme Court, except that his right to appeal is preserved as to issues of ineffectiveness or inadequacy of counsel and sentencing errors. If the defendant cannot afford the costs of the appeal, he may petition the Court to appeal *in forma pauperis*. Also, the defendant has the right to have an attorney represent him during the appeal process. If the defendant cannot afford an attorney, the Court will order that one be provided to him at no cost. If the defendant wishes to appeal, he must file a notice of appeal with the Court within 30 days of the date hereof.

The Court orders the Clerk of the Courts to serve copies of this Order of Conviction and Sentence on counsel for the parties, the defendant, and the Superintendent of Prisons.

Date: February 28, 2006.

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

Carl B. Ingram
Chief Justice