

TONY I. EDWARDS, Defendant-Appellant

v.

**TRUST TERRITORY OF THE PACIFIC ISLANDS,
Plaintiff-Appellee**

Criminal Appeal No. 58

Appellate Division of the High Court

Marshall Islands District

February 7, 1977

Appeal following conviction of embezzlement and misconduct in public office. The Appellate Division of the High Court, per curiam, affirmed.

1. Criminal Law—Appeals—Scope of Review

In criminal appeals in which it is claimed the evidence was inadequate to support finding of guilty, paramount interest of Appellate Division of High Court is to assure that all efforts are made to consider any basis upon which appellant may have a valid claim for reversal, even when counsel has come dangerously close to abandoning his client.

2. Attorney and Client—Adequacy of Representation

Appellate Division of High Court will not allow slipshod methods of counsel to stand without sanctions.

BURNETT, *Chief Justice*, HEFNER, *Associate Justice*
PER CURIAM

The appellant was convicted of embezzlement and misconduct in public office on February 20, 1976, and sentence was imposed on March 4, 1976. Stay of Execution was granted on March 5, 1976, pending this appeal.

The one ground stated in the notice of appeal was that the evidence "is inadequate to support the finding of guilty beyond a reasonable doubt."

The appellant filed an affidavit that he was unable to afford the transcript and that the transcript was vital to his appeal. On May 3, 1976, the trial judge authorized the appellant to proceed without payment of the transcript fees and the government paid \$127.00 to have the transcript prepared. It was served on the Public Defender at Majuro, Marshall Islands on July 15, 1976. The entire record was certified on August 5, 1976, and served the same date on appellant's counsel.

No brief was filed and the Appellate Division dismissed the appeal on November 10, 1976. Upon motion by appellant's counsel, the appeal was reinstated and appellant was given until January 31, 1977 to file his brief on appeal. Notwithstanding this second chance, appellant's counsel failed to file any brief. There was filed a "Waiver of Written Argument" with the Clerk of Courts, Palau, on January 31, 1977. This document did not reach the Appellate Division Clerk until February 3, 1977.

The "Waiver of Argument" filed by appellant's counsel "moves the Court to review the trial court's findings of fact (there are none except the finding of guilty) in light of the

evidence presented and its conclusions of law (there are none) with respect to the defendant-appellant's conviction of embezzlement and misconduct in public office . . ."

Thus, the appellant's counsel apparently is asking this Court to review the transcript to determine if the trial court was clearly erroneous (6 TTC § 355(2)) without even bothering to point out what parts of the transcript are applicable. This is indeed strange when the appellant asserted under oath that the transcript was vital to his appeal. Simply stated, the appellant's counsel asks the Appellate Division to re-weigh the evidence.

[1] The paramount interest of this court is to assure that all efforts are made to consider any basis upon which the appellant in a criminal case may have a valid claim to reverse his conviction. This is even true in this case where his counsel has come dangerously close to abandoning his client.

The transcript has been read. The exhibits admitted into evidence have been considered. The finding of guilt is more than substantiated.

[2] This court will not allow the slipshod methods of counsel to stand without sanctions. It is one thing to advocate the cause of a client; it is another thing to handle an appeal in the manner done in this case.

The judgment of conviction is Affirmed and the appellant shall be incarcerated upon receipt of this Opinion to commence serving his term of imprisonment. The Public Defender's Office shall within sixty (60) days hereof deposit one hundred twenty-seven dollars (\$127.00) with the Trust Territory Treasurer for reimbursement for the costs of the transcript.