IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT APIA

S. 10/94

IN THE MATTER: of the Constitution and the Crimes Ordinance 1961

A N D

IN THE MATTER: of an Application for a Writ of Habeas Corpus

BETWEEN: AFA TAALILI of Fusi, unemployed

Applicant

A N D: THE COMMISSIONER OF PRISONS provided under the Prisons Act 1967

Defendant

Counsel: T. Malifa for accused
M.B. Edwards for prosecution

Hearing: 29th July 1994

Decision: 29th July 1994

DECISION OF SAPOLU, CJ

This is an application for the issue of the writ of habeas corpus to order the release of the accused from Tafaigata Prison.

The accused was tried on 6 and 7 July 1994 on the charge of murder before a panel of five assessors. He was found not guilty of the charge of murder but guilty of the charge of manslaughter. The accused was then

remanded in custody for a probation report and sentencing. He is now asking for habeas corpus to secure his release from custody on the ground that the assessors were functus officio before delivering their verdict of manslaughter. Briefly, the foreman of the assessors when the assessors were convened to deliver their verdict announced that the verdict was that the charge of murder had not been proved. Shortly afterwards, two of the assessors informed the Court through the Deputy Registrar that the correct and unanimous verdict of the assessors was guilty of manslaughter. Steps were immediately taken to reconvene the assessors. When they were reconvened and the Court again called into session, each assessor was asked in open Court as to his or her verdict. Every assessor said his or her verdict was guilty of manslaughter and that was the true and unanimous verdict the assessors had reached. The accused is now saying that the assessors were functus officio after the foreman delivered the first verdit that the charge of murder had not been proved and the assessors were discharged.

It appears to me that in these circumstances the issue of the writ of habeas corpus is not the right thing to do. The reason is that the Court will not grant habeas corpus to secure the release of a person who has been convicted and remanded in custody for sentence, or if he is sentenced to a term of imprisonment following his conviction, he is still serving that term of imprisonment. A writ of habeas corpus, however, may be granted to secure the release of a prisoner who continues to be held in custody after his sentence of imprisonment has expired for then he is no longer held in custody pursuant to the sentence by the Court.

The correct procedure to be adopted where an accused has been convicted and remanded in custody for sentence but he is dissatisfied with the convic-

tion is to wait until he is sentenced. And if he is sentenced to a term of imprisonment, then to appeal against his conviction and ask for bail. If the accused is convicted and has been sentenced to a term of imprisonment, and he is dissatisfied with the conviction or sentence or both, then again the correct procedure is to appeal against conviction or sentence or both and ask for bail. But the accused cannot be granted habeas corpus to secure his release while remanded in custody for sentence on a criminal charge or while serving a sentence of imprisonment imposed by a Court of competent jurisdiction.

For the English position relating to the writ of habeas corpus in this context see Re Featherstone (1953) 37 Cr. App. Rep. 146; Ex parte Corke [1954] 2 All E.R. 440; Re Wring, Re Cook [1960] 1 All E.R. 536. These same authorities are cited in 37 Halsburys Laws of England, 4th ed., para 584 in support of the proposition that the writ of habeas corpus does not in general lie in respect of a person in custody on a criminal charge.

The application for habeas corpus is therefore denied. I will not say anything on the functus officio issue now as that should be left for consideration at a later stage if there is an appeal and a bail application.

T.F.M. Sapolu

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CHIEF JUSTICE