# IN THE SUPREME COURT OF GUAM

**EDUARDO C. BITANGA,**
**Director of Corrections, Government of Guam**
Petitioner,

**vs.**

**SUPERIOR COURT OF GUAM**,
Respondent,

**MARK BAMBA ANGOCO**,
Real Party in Interest**.**

## OPINION

Supreme Court Case No. WRP99-002
Superior Court Case No. SP0039-98

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Original Writ in the Supreme Court of Guam
Argued and submitted on August 19, 1999
Hagåtña, Guam


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BEFORE: BENJAMIN J.F. CRUZ, Chief Justice, RICHARD H. BENSON and JOHN A. MANGLONA, Designated Justices.

**CRUZ, CJ.:**

**[1]** This is a writ of prohibition commanding the Superior Court to desist from releasing the Real Party in Interest from custody at the Department of Corrections. For the reasons set forth below, we find that we have jurisdiction over this matter and by separate order issue a Peremptory Writ of Prohibition.

## BACKGROUND

**[2]** Real party in interest, Mark Bamba Angoco (hereinafter, "Angoco") was convicted of Aggravated Murder in 1995. The Superior Court granted Angoco a Writ of *Habeas Corpus* that ordered Angoco's release from custody unless The People retried him within thirty days of the conditional writ becoming final. This conditional writ of *habeas corpus* was entered into the docket on June 23, 1999. That same day, Angoco filed a motion for his release. On June 24, 1999, the people filed their opposition to the motion for release as well as a notice of appeal regarding the court's decision and order and issuance of the Conditional Writ of *Habeas Corpus*.

**[3]** The Superior Court, on Angoco's motion for release, ordered that he be released on July 14, 1999. The following day, on July 15, 1999, the people filed an Emergency Petition for a Peremptory Writ of Prohibition, the Alternative Writ of Mandate, or a Stay to this court. Through this Petition, the People requested that Angoco remain in custody pending the outcome of the appeal. On July 19, 1999, we issued an Alternative Writ of Prohibition that vacated the Superior Court's release order

and left Angoco in the custody of the Department of Corrections. This proceeding followed.

## ANALYSIS

**[4]** The issue we address is whether the lower court's decision to grant the conditional writ of habeas corpus was appealable. In *Browder v. Director, Department of Corrections of Illinois*, a convicted felon was unsuccessful on direct appeal and instituted *habeas* proceedings. *Browder v. Director, Department of Corrections of Illinois*, 434 U.S. 257, 98 S.Ct. 556 (1978). The *habeas* court had found that the police lacked probable cause to arrest the petitioner and issued an opinion and order directing that the petitioner be released from custody unless the state retried him within sixty days. Twenty-eight days after entry of the *habeas* court's order, the respondent moved for a stay of execution of the writ on grounds that the *habeas* court erred in granting the writ without first conducting an evidentiary hearing to determine if in fact petitioner was arrested without probable cause. An evidentiary hearing was held and the *habeas* court ruled that the writ was properly issued. Respondent filed a notice of appeal, and the Petitioner argued that the appeals court lacked jurisdiction to review the original order granting relief since Respondent's notice of appeal was not filed within thirty days of that order, and the time for appeal had not been tolled by respondent's motion for stay. *Id*. at 262-63, 98 S.Ct. at 560.

**[5]** The issue in *Browder* was whether the appeal was timely as measured by whether time for filing of the appeal ran from the date the *habeas* court issued the writ and order or from the date that the ruling on the evidentiary hearing was issued. *Id*. at 258, 98 S.Ct. at 558. The United States Supreme Court began its analysis by staying that an appeal in a *habeas corpus* proceeding, 28 U.S.C. § 2253, lies from a "final order." Id. at 265, 98 S.Ct. at 562. The Respondent in *Browder* contended that the *habeas* court's order and writ was not final because all required procedures under the Habeas

Corpus Act had not been completed at the time the order was issued. *Id.* To this the United States Supreme Court answered: "[Respondent] fails to distinguish between the [jurisdictional] requirements of the *habeas corpus* statutes and the procedural means for correcting asserted error in fulfilling the statutory command. Here the District Court discharged its duty 'summarily [to] hear and determine the facts,' 28 U.S.C. § 2243, by granting the [petition for writ of habeas corpus] ... . If respondent were correct in his theory of finality, any order later alleged to have been entered precipitately or after an incomplete hearing could be considered nonfinal for purposes of appeal.[1] *Id*. at 266-67, 98 S.Ct. at 561-62 (internal citations omitted).

**[6]** In the instant appeal, the lower court relied upon Title 8 GCA § 135.16, to issue the conditional writ of *habeas corpus*. Section 135.16 provides:

> Any judge authorized to grant the writ, to whom a petition therefor is presented, shall, if it appears that the writ ought to issue, grant the same without delay; and if the person by or upon whose behalf the application for the writ is made be detained upon a criminal charge, may release him pursuant to Chapter 40 (commencing with § 40.10) pending the determination of the proceeding.

8 GCA §135.16 (1993).

**[7]** Angoco correctly states that the statutory scheme clearly provides that the initial determination of release resides with the trial court. The relevant initial determination in this case was made when the lower court determined that the Conditional Writ of *Habeas Corpus* would issue if the people did not retry Angoco within thirty days. The court by its own order left itself nothing to decide. The people were left to decide the fate of the case by operation of the decision, relative

[1] An order granting writ of habeas corpus is a final judgment for the purposes of appeal if it ends the litigation on merits and leaves nothing for the court to do but execute the judgment. *Catlin v. United States*, 324 U.S. 229, 233, 65 S.Ct. 631, 633 (1945).

to retrying Angoco. As a consequence, the conditional writ of habeas corpus was final and appealable.

**[8]** Although 8 GCA § 135.16 authorized the Superior Court to grant a writ and release a petitioner pending determination of the proceeding, it was divested of such jurisdiction upon the filing of the people's appeal pursuant to Title 8 GCA § 135.74 (1993). Section 135.74 addresses the effect of an appeal to the court's jurisdiction. It provides in its entirety:

> **Section 135.74. Appeal by Attorney General: no release pending appeal: bail permitted.** An appeal may be taken to the Supreme Court by the Attorney General from a final order of the Superior Court made upon the return to the writ of habeas corpus discharging a defendant after his conviction, and all criminal cases prosecuted in a court of record. If an appeal is taken, the defendant shall not be discharged from custody pending a final decision upon the appeal and he shall be retaken into custody if he has been discharged, provided, however, that the Guam Supreme Court may order his release pursuant to chapter 40 (commencing with section 40.10).

8 GCA § 135.74.

**[9]** Under section 135.16, the Superior Court had sole jurisdiction prior to the appeal. However, when the Attorney General, pursuant to section 135.74, appealed to this court on June 24, 1999, the filing of the appeal divested the lower court of its authority to hear any further motions or to release Angoco. *See* 8 GCA § 135.74. The appeal had the effect of transferring jurisdiction from the Superior Court to the Supreme Court. *Id*. The meaning and effect of the statute is clear. The Superior Court never shared concurrent jurisdiction over Angoco with the Supreme Court Guam. Instead §§ 135.74 and 135.16 work parallel to each other depending upon which court has jurisdiction at the time the motion is made.

**[10]** As a final matter, we note that given the language in 8 GCA § 135.74, particularly, "the defendant shall not be discharged from custody pending a final decision on the appeal and he shall be retaken into custody if he has been discharged, provided, however, that the Supreme Court may order his release pursuant to Chapter 40 (commencing with section 40.10)," this court possesses the

authority to prohibit Angoco from being discharged from custody pending the outcome of this appeal. Thus, our decision to grant the Alternative Writ of Prohibition on July 19, 1999 was proper.

## CONCLUSION

**[11]** The lower court's decision to grant the conditional writ of habeas corpus was a final and appealable order. The people's subsequent filing of the appeal of the conditional writ of habeas corpus effectively concluded the Superior Court's jurisdiction over the matter. Accordingly, the lower court no longer had the authority to hear the motion or release Angoco

**[12]** Based on the foregoing, this court had the jurisdiction and authority to issue the Alternative Writ of Prohibition. Furthermore, it is within this court's power to grant a Peremptory Writ of Prohibition in this matter. We hereby elect to do so. The Peremptory Writ shall issue prohibiting Angoco's release pending appeal.

JOHN A. MANGLONA
Designated Justice

BENJAMIN J. F. CRUZ
Chief Justice

**RICHARD H. BENSON, Dissenting:**

**[13]** This is a hearing on the petition for a Writ of Prohibition the government filed in this court as an original action to prohibit the Superior Court of Guam from releasing Angoco following its issuance of the Conditional Writ of Habeas Corpus.

**[14]** The issue presented is whether the Superior Court has jurisdiction to order the release.

**[15]** It is undisputed that the Conditional Writ of Habeas Corpus is an appealable order, that is, it is final for purposes of appeal.

**[16]** The majority recognizes the Superior Court's authority to release pursuant to 8 GCA section 135.16, but contends that this authority terminated when the government filed its notice of appeal pursuant to a GCA section 135.74.

**[17]** Section 135.16 extends the right to release "pending the determination of the proceeding." "Determination," as defined in Black's Law Dictionary 405 (5th ed. 1979), is "[t]he decision of the court or administrative agency. It implies an ending or finality of a controversy or suit." The Conditional Writ is final for purposes of appeal, but it certainly does not finish the proceeding. Whether the Supreme Court affirms, remands or reverses the writ, the Superior Court must take further action in the matter. This is emphasized by considering the proceeding if the government had not appealed. Although the Superior Court had made one order, thirty days would have had to pass before its next action. If the government retried the case the matter would be heard in that court; if the government did not seek a retrial, the Superior Court would discharge Angoco.

**[18]** I would therefore deny the Petition for a Writ of Prohibition. Because the "determination of the proceeding" is "pending," the Superior Court has jurisdiction to grant a release pursuant to section 135.16.

**[19]** A writ of prohibition is an "extreme remedy" issued only when "extraordinary situations" justify it. *Topasna v. Superior Court of Guam*, 1996 Guam 5 ¶ 5. The writ is proper only when the petitioner does not have a "plain, speedy and adequate remedy in the ordinary course of law." 7 GCA § 31302 (1993). I did not discuss these prerequisites because the Superior Court did not act in excess of its jurisdiction. The majority opinion should consider them, but did not.

**[20]** The majority opinion relies on § 135.74 in its view that the appeal divested the Superior Court of its § 135.16 authority. It is not clear from the opinion, but apparently the majority is relying on this portion of the section, "[i]f an appeal is taken, the defendant shall not be discharged from custody pending a final decision upon the appeal ... ." The section uses "discharged" the second time, and later speaks of "release" – in parallel with "release" in § 135.16. The presumption prevails that when different words are used, they have different meanings. *Legacy Emanuel Hosp. & Health Ctr. v. Shalala*, 97 F.3rd 1261, 1265 (9th Cir. 1996). The word "release" in each section is entirely clear from its reference to "Chapter 40 (commencing with § 40.10)." A statement of the difference between "release" and "discharged" is found in *Fay v. Noia*, 372 U.S. 391, 440 n. 45 (1963): "It should be borne in mind that the typical order of the District Court in such circumstances is a conditional release, permitting the State to rearrest and retry the petitioner without actually discharging him from custody." Nothing in the Guam statute leads me to believe that "discharge" has a meaning in § 135.74 other than its normal and usual meaning as in *Fay*.

**[21]** This distinction between release and discharge is consistent with the phrase in § 135.16, "pending the determination the proceeding." If a defendant is "discharged from custody" (§ 135.74) the proceeding has been determined (ended, finished) – a conditional release would be improper. At that point the Superior Court would have no authority, nor would there be any need.

**[22]** This analysis is in harmony with the traditional view of a trial court's jurisdiction once an

appeal has been filed. Generally, a properly filed notice of appeal serves to divest the trial court of any further jurisdiction in the matter except for those actions taken in aid of the appeal. *See*, *e.g.*, *Travelers Ins. Co. v. Liljberg Enterprises, Inc.*, 38 F.3d 1404, 1407 n.3 (5th Cir. 1994). The conditions of release for an accused or convicted person have traditionally been considered an action in aid of the appeal. *See*, *e.g*. *Tate v. Workman*, 958 F.2nd 164,167 (6th Cir. 1992); *Franklin v. Duncan*, 891 F.Supp. 516, 518 (N.D.Cal. 1995); Fed. R. Crim. P. 38 (a);Fed. R. App. P. 9 (b), 23; GRCrimP 38 (a); GRAP 5 (b). Because of the majority opinion all motions for release made after the government has appealed a conditional writ of *habeas corpus* must now be filed in the Supreme Court of Guam. I do not believe that the Guam Legislature intended that the Supreme Court would routinely hold evidentiary hearings on a prisoner's release.

**[23]** The penultimate paragraph of the opinion curious: drawing on the last phrase of § 135.74, the majority states that since it has the authority to prohibit Angoco's discharge, the decision to grant an Alternative Writ was proper. The premise is wrong: the code itself prohibits discharge pending appeal. Under § 135.74 if the issuance of a writ of *habeas corpus* has been appealed, a defendant cannot be discharged from custody. It is also curious because the majority fails to distinguish between "release" and "discharge." Angoco has not been discharged: the Superior Court ordered his release.

**[24]** In the final paragraph the majority opinion apparently denies Angoco release pending appeal without a motion for release having been made or hearing held, and without any reference to Chapter 40.

**[25]** I would deny the Petition for Writ of Prohibition, discharge the Alternative Writ of Prohibition, and vacate the orders of July 16 and 19, 1999.

RICHARD H. BENSON
Designated Justice