

Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

PEOPLE OF THE VIRGIN ISLANDS,) **S. Ct. Crim. No. 2007-112**
) Re: Super. Ct. Crim. No. 2006-156
Appellant/Plaintiff,)
)
v.)
)
MAXIMILLIANO RIOS)
)
Appellee/Defendant,)
)

On Appeal from the Superior Court of the Virgin Islands
Considered and Filed: November 14, 2008

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and
IVE ARLINGTON SWAN, Associate Justice.

APPEARANCES:

Richard S. Davis, Esq.
Assistant Attorney General
St. Thomas, U.S.V.I.
Attorney for Appellant

Francis E. Jackson, Esq.
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Attorney for Appellee

OPINION OF THE COURT

PER CURIAM.

This matter comes before the Court as a result of an appeal brought by the People of the Virgin Islands (hereafter “People”) of the Superior Court’s September 18, 2007 Order sentencing Appellee Maximilliano Rios (hereafter “Rios” or “Appellee”) to a suspended sentence of one year incarceration for unlawful possession of a firearm. The People contend that this sentence violates title 14, section 2254 of the Virgin Islands Code, which, according to the People,

prohibits a court from suspending the mandatory minimum sentence for this crime. For the following reasons, we dismiss the People's appeal for lack of jurisdiction.

I. FACTUAL AND PROCEDURAL BACKGROUND

On or about May 4, 2007, Rios was charged with possession of an unlicensed firearm in violation of title 14, section 2253(a) of the Virgin Islands Code, possession of ammunition in violation of title 14, section 2256(a), and possession of stolen property in violation of title 14, section 2101(a). Rios pled not guilty to these charges and waived his right to a jury trial. At the conclusion of a June 11, 2007 bench trial, the Superior Court found Rios guilty of possession of an unlicensed firearm and possession of ammunition, but not guilty of possession of stolen property.

After a sentencing hearing conducted on September 11, 2007, the Superior Court entered a September 18, 2007 Order sentencing Rios to one year incarceration for each count, served concurrently, with the sentences immediately suspended. The trial court also placed Rios on supervised probation for two years, ordered that he enroll as a full time student at the University of the Virgin Islands, ordered that Rios perform 100 hours of community service, and further ordered that Rios pay various fines. The People timely filed their Notice of Appeal on October 11, 2007, arguing that the trial court's sentence was contrary to the statutory minimum penalty proscribed for possession of an unlicensed firearm.

II. DISCUSSION

This Court may not consider the merits of an appeal unless it first determines that it has jurisdiction over the matter. *V.I. Gov't Hosp. and Health Facilities Corp. v. Gov't of the V.I.*, Civ. No. 2007-125, slip op. at 3 (V.I. Sept. 16, 2008). It is well established that the People cannot appeal a criminal judgment "unless statutory authority expressly and clearly permits such

an appeal.” *People of the V.I. v. Antonio George*, Crim. No. 2007-120, slip op. at 4 (V.I. June 13, 2008).

Here, the People have not cited to any specific legal authority that would confer appellate jurisdiction on this Court over the instant appeal. Rather, the People simply state that “The defendant was found guilty following a bench trial, and it is, therefore, properly before this court.” (Appellant’s Br. 2-3.) Although Rios has not questioned the People’s statement of jurisdiction, this Court, as a court of limited jurisdiction, may raise the issue of appellate jurisdiction *sua sponte*. *Gov’t of the V.I. ex rel. Larsen v. Ruiz*, 145 F. Supp. 2d 681, 689 (D.V.I. App. Div. 2000) (citing *NutraSweet Co. v. Vit-Mar Enterprises*, 176 F.3d 151 (3d Cir. 1999)).

We find that this Court does not have jurisdiction over the instant matter. As this Court recently held in *People of the V.I. v. Pratt*, Crim. No. 2008-013 (V.I. November 14, 2008), neither title 4, section 33(d) of the Virgin Islands Code nor any other statute authorizes the People to directly appeal a sentencing order.¹ Because this Court lacks jurisdiction, it is not necessary or appropriate to consider the merits of the People’s appeal.²

III. CONCLUSION

This Court does not have jurisdiction to hear the People’s appeal because no statute authorizes the People to appeal the underlying Superior Court order. Accordingly, we dismiss the People’s appeal for lack of jurisdiction.

¹ We note that our decision does not leave the People without remedy to correct a purportedly illegal sentence imposed by a trial court. The United States Supreme Court has held that, while the government may not directly appeal a trial court’s order imposing an illegal sentence, it may file a petition for writ of mandamus requesting that the higher court vacate the illegal order. *See Ex parte United States*, 242 U.S. 27, 37 S.Ct. 72, 61 L.Ed. 129 (1916).

² We note that, since we do not reach the merits in this case, we make no determination as to the correctness of the trial court’s sentence.

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ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court