

Not For Publication

**IN THE SUPREME COURT OF THE VIRGIN ISLANDS**

<b>RINEL FERDINAND,</b>	)	<b>S. Ct. Civ. No. 2008-0059</b>
Appellant/Petitioner,	)	Re: Super. Ct. Civ. No. 16/2008 (STX)
	)	
v.	)	
	)	
<b>BUREAU OF CORRECTIONS, ET AL.,</b>	)	
Appellees/Respondents.	)	
	)	
	)	
	)	

---

On Appeal from the Superior Court of the Virgin Islands  
Considered: July 12, 2011  
Filed: July 19, 2011

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

**ATTORNEYS:**

**Rinel Ferdinand**  
St. Thomas, U.S.V.I.  
*Pro se*

**Matthew C. Phelan, Esq.**  
Assistant Attorney General  
St. Thomas, U.S.V.I.  
*Attorney for Appellee*

**OPINION OF THE COURT**

**Hodge, Chief Justice.**

Appellant Rinel Ferdinand, a *pro se* prisoner, appeals from a May 1, 2008 Superior Court Order denying his petition for writ of habeas corpus and a June 13, 2008 Order denying his motion for reconsideration. For the reasons that follow, we affirm these orders.

**I. STATEMENT OF FACTS AND PROCEDURAL POSTURE**

On or about December 9, 1998, Ferdinand entered into a plea agreement with the

Government of the Virgin Islands, in which he agreed to plead guilty to second degree murder in violation of section 922(b) of title 14 of the Virgin Islands Code in exchange for the dismissal of all other charges. In its March 11, 1999 judgment and commitment, the Superior Court accepted the plea agreement and sentenced Ferdinand to thirty years incarceration.

Ferdinand did not appeal the March 11, 1999 judgment and commitment. However—several years later—on December 21, 2007, he filed the present *pro se* petition for writ of habeas corpus with the Superior Court, contending that the March 11, 1999 disposition illegally sentenced him to thirty years incarceration when—according to Ferdinand—the maximum sentence for a felony is five years incarceration. After the Superior Court denied this petition in a May 1, 2008 Order, Ferdinand filed a *pro se* motion for reconsideration, which the Superior Court denied on June 13, 2008. Ferdinand filed a “Notice of Writ” on July 14, 2008, which the Superior Court construed as a timely notice of appeal.<sup>1</sup>

This Court, in a March 6, 2009 Order, remanded the matter to the Superior Court for a determination of whether Ferdinand was entitled to a certificate of probable cause pursuant to former Supreme Court Rule 14(b),<sup>2</sup> which the Superior Court denied in a September 24, 2010 Order. However, because this Court, in a December 20, 2010 Promulgation Order, amended Rule 14 to eliminate the certificate of probable cause requirement, this Court, in a January 11,

---

<sup>1</sup> See V.I.S.CT.R. 5(a)(1) (“In a civil case in which an appeal is permitted by law as of right from the Superior Court to the Supreme Court, the notice of appeal required by Rule 4 shall be filed with the Clerk of the Superior Court within thirty days after the date of entry of the judgment or order appealed from; but if the Government of the Virgin Islands or an officer or agency thereof is a party, the notice of appeal may be filed by any party within sixty days after such entry.”).

<sup>2</sup> Pursuant to former Supreme Court Rule 14(b), “[a]n appeal by the applicant from the order of the Superior Court denying the writ of habeas corpus may not proceed unless the adjudicating judge of the Superior Court issues a certificate of probable cause.” However, on December 20, 2010, this Court, through Promulgation Order No. 2010-003, repealed this provision in its entirety and replaced it with language expressly providing that “a final order of the Superior Court denying an application for writ of habeas corpus . . . may be appealed to the Supreme Court as of right . . . .”

2011 Order, permitted Ferdinand's appeal to proceed.

## II. DISCUSSION

"The Supreme Court [has] jurisdiction over all appeals arising from final judgments, final decrees [and] final orders of the Superior Court . . . ." V.I. CODE ANN. tit. 4 § 32(a). Since the Superior Court's June 13, 2008 Order represents a final appealable order, this Court possesses jurisdiction over Ferdinand's appeal.

The standard of review for this Court's examination of the Superior Court's application of law is plenary, while the trial court's findings of fact are reviewed for clear error. *St. Thomas-St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 329 (V.I. 2007).

Ferdinand, as his sole issue on appeal, renews his claim that the Superior Court was only permitted to sentence him to five years incarceration when it accepted his guilty plea,<sup>3</sup> and that the thirty-year sentence in the March 11, 1999 Judgment and Commitment is therefore illegal. The sole support Ferdinand provides for this argument is section 3 of title 14 of the Virgin Islands Code, which provides, in pertinent part, that "[e]xcept in cases where a different punishment is prescribed by law . . . every crime or offense declared to be a felony is punishable by imprisonment not exceeding five years." 14 V.I.C. § 3(a)(1).

Ferdinand's argument lacks merit. By its own terms, the five-year maximum punishment in section 3(a)(1) does not apply "in cases where a different punishment is prescribed by law." As the Superior Court correctly observed in its May 1, 2008 Order, section 923 of title 14 of the Virgin Islands Code expressly provides a different punishment for second degree murder:

---

<sup>3</sup> In its appellate brief, the Bureau of Corrections contends that Ferdinand may not file a petition for writ of habeas corpus because he failed to appeal the March 11, 1999 Judgment and Commitment. However, the Legislature has expressly provided that "[e]very person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint," 5 V.I.C. § 1301, without mandating that the individual have previously taken a direct appeal.

Whoever commits murder in the second degree *shall be imprisoned for not less than five (5) years*, provided, that if such second degree murder was perpetrated upon a law enforcement officer while such officer was engaged in the performance of his official duties, the perpetrator shall be imprisoned for not less than ten (10) years.

14 V.I.C. § 923(b) (emphasis added). Thus, section 3(a)(1) has no applicability to this case, and the March 11, 1999 judgment and commitment did not impose a sentence for second degree murder that is greater than the maximum authorized by law. *See Ruiz v. United States*, 35 F.2d 500, 501-02 (3d Cir. 1966) (term of imprisonment of definite period of years is lawful for second degree murder under 14 V.I.C. § 923(b)). Consequently, the Superior Court did not err when it denied Ferdinand’s petition for writ of habeas corpus and—likewise—did not err when it denied his motion for reconsideration, which was based on this same argument.

### **III. CONCLUSION**

Since section 923(b) expressly imposes a five year minimum sentence for second degree murder, that statute prescribes a “different punishment” than the general felony punishment statute codified as section 3(a)(1). Therefore, Ferdinand’s thirty year sentence for second degree murder does not unlawfully imprison him or unlawfully deprive him of liberty. 5 V.I.C. § 1301. Accordingly, we affirm the Superior Court’s May 1, 2008 and June 13, 2008 Orders.

**Dated this 19th day of July, 2011.**

**BY THE COURT:**

\_\_\_\_\_/s/\_\_\_\_\_  
**RHYS S. HODGE**  
**Chief Justice**

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