JOAQUIN C. ARRIOLA and DOUGLAS F. CUSHNIE,
Petitioners

v.

ROBERT A. HEFNER and THE TRIAL DIVISION OF THE HIGH COURT OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS, Respondents

Civil Action No. 172

Appellate Division of the High Court

November 3, 1976

Petition for writ of prohibition. The Appellate Division of the High Court, Brown, Associate Justice, held that writ of prohibition does not properly lie in proceeding for contempt since adverse ruling can be remedied by way of appeal.

1. **Prohibition—Generally**

   Writ of prohibition is to be used with great caution and forbearance and should be issued only in cases of extreme necessity.

2. **Prohibition—Prerequisites for Writ**

   Requisites for issuance of writ of prohibition, absence of any of which requires denial of writ, are that petitioner must show that respondent is about to exercise judicial power, that exercise of such power is unauthorized by law, and that it would result in injury for which there is no other adequate remedy.

3. **Prohibition—Particular Cases**

   Writ of prohibition does not properly lie in proceeding for contempt since an adverse ruling can be adequately remedied by appeal. (Rules Crim. Procedure, Rule 20(c))

4. **Prohibition—Generally**

   Writ of prohibition is not one of right but one of sound judicial discretion, to be granted or refused according to facts and circumstances of particular case, and it ordinarily will not issue where there is another legally adequate remedy, as by appeal or otherwise.

BROWN, *Associate Justice*

Hearing on the Petition for Writ of Prohibition herein came on before this Court on November 3, 1976, petitioners, and each of them, appearing by and through their counsel of record, William M. Fitzgerald, Esq., of Arriola

and Cushnie. No appearance was made in opposition to the petition.

After carefully considering all of the matters before this Court,

IT IS HEREBY ORDERED that the said petition be, and it is denied.

[1, 2] In this connection, it must be remembered that a Writ of Prohibition is a prerogative writ and is to be used with great caution and forbearance and should be issued only in cases of extreme necessity. The requisites for the issuance of a Writ of Prohibition are that the petitioner must show that the respondent is about to exercise judicial power, that the exercise of such power is unauthorized by law, and that it would result in injury for which there is no other adequate remedy. Each of these three elements is essential, and if the petitioner fails to establish anyone of them, the writ must be denied.

[3] In *State v. Superior Court of Washington King County*, 131 P. 816 (Wash.) the Court was faced with a matter strikingly similar to that now before this Court and held that prohibition does not properly lie in a proceeding for a contempt since an adverse ruling has an adequate remedy by way of an appeal. This being so, the Court held that the petitioner was not entitled to the prerogative writ it sought. Rule 20(c), Rules of Criminal Procedure, clearly provides that contempt proceedings, summary or otherwise, shall be subject to review and appeal to the same extent as other cases, and the record shall be forwarded in the same manner.

[4] Briefly, it may be said that a Writ of Prohibition is not one of right, but one of sound judicial discretion, to be granted or refused according to the facts and circumstances of the particular case, and it ordinarily will not issue where there is another legally adequate remedy, as by

appeal or otherwise. *Ex parte Peru*, 318 U.S. 578, 87 L.Ed. 1014, 63 S.Ct. 793; 63 Am.Jur. *Prohibition*, § 7, 232.

A reading of the authorities submitted by petitioners shows them to be clearly distinguishable from the case before the Court.