

**TRUST TERRITORY OF THE PACIFIC ISLANDS,  
Plaintiff-Appellee**

v.

**DANIS CANTERO, Defendant-Appellant**

Criminal Appeal No. 78

Appellate Division of the High Court

Ponape District

November 4, 1980

Appeal from criminal conviction. The Appellate Division of the High Court, per curiam, held that where no transcript of the trial record was available for review on appeal, the conviction would be set aside and remanded to the Trial Division for a new trial.

**Appeal and Error—Record on Review—Lost Records and Files**

Where a timely notice of appeal from a criminal conviction was filed, and transcript of trial record was unavailable for review, there was no choice but to set aside the conviction and remand for a new trial.

TRUST TERRITORY v. CANTERO

Before BURNETT, *Chief Justice*, and NAKAMURA,  
*Associate Justice*

PER CURIAM

This long-pending appeal is from conviction in Ponape Criminal Case No. 18-78; judgment entered August 17, 1978. The trial record has never been certified to this court since no transcript has been made by the court reporter.

Timely notice of appeal was filed, an estimate of transcript cost obtained, and permission of the Court granted for appellant to proceed in forma pauperis. The reporter left her employment with the Court, and has rejected all efforts of the Administrative Office to obtain the required transcript.

The notice of appeal makes clear that the appeal rests, in large part, on appellant's claim of insufficient evidence. While we do not set aside findings of fact of the Trial Division "unless clearly erroneous" 6 TTC Sec. 355(2), appellant is entitled to have them reviewed. Without a transcript, we have nothing to review.

This result is unfortunate. Under the circumstances, we have no choice but to set the conviction aside and remand to the Trial Division for a new trial. Appellee will certify, within 20 days of receipt of this Order, whether it intends to proceed with trial. If this not done, the Trial Division will dismiss.

IT IS SO ORDERED.