

IN THE SUPREME COURT OF GUAM
TERRITORY OF GUAM

PEOPLE OF THE TERRITORY OF GUAM

Appellee,

vs.

BEAU BRUNEMAN,

Appellant.

Criminal Case No. CRA96-001

Filed: September 11, 1996

Cite as: 1996 Guam 3

Appeal from the Superior Court of Guam

Argued and Submitted 12 August 1996

Agana, Guam

Appearing for the Defendant-Appellant

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OPINION

BEFORE: PETER C. SIGUENZA, Chief Justice, JANET HEALY WEEKS, and
MONESSA G. LUJAN, Associate Justices.

WEEKS, J.:

Defendant-Appellant, Beau Bruneman, offenses including aggravated murder and
charged in two separate criminal caes with criminal sexual conduct, appeals from a

decision of the Superior Court, the Honorable Alberto C. Lamorena, III, presiding, denying his request for recognizance release. Appellant contends that the denial violates his right to due process and his rights under the Eighth Amendment to the United States Constitution which proscribes excessive bail. We affirm the decision of the Superior Court.

I. BACKGROUND

[1] Appellant has been charged in Superior Court Criminal Case No. **CF81-96** with Aggravated Murder (two counts) and First Degree Criminal Sexual Conduct (two counts), and in Superior Court Criminal Case No. **CF218-96** with Attempted Third Degree Criminal Sexual Conduct (two counts), Assault with Intent to Commit Criminal Sexual Conduct (two counts), and Second Degree Criminal Sexual Conduct. The Superior Court set bail at one million dollars (\$1,000,000.00). Appellant filed motions for release in both criminal cases. The judge denied both motions after a hearing held on 30 July 1996.

[2] Appellant filed a motion for review of his release conditions pursuant to 8 G.C.A. § 40.50 which provides for a Bail

[5] Unlike the federal act reviewed in *Salerno*, the Guam release statutes do not provide for pre-trial detention without bail.

Redetermination Hearing before the judge who imposed the conditions within twenty-four (24) hours of the initial hearing. After a second hearing on 31 July 1996 the judge denied the motion.

[3] On appeal, Appellant contends that the Guam release statutes violate the Fifth Amendment Due Process Clause, and the Eighth Amendment Excessive Bail Clause of the United States Constitution made applicable to Guam by the Organic Act of Guam, 48 U.S.C. § 1421 **et seq.**

II. DISCUSSION

[4] Appellant argues that the Guam release statutes, specifically 8 G.C.A. §§ 40.15 and 40.20, violate his due process rights. Appellant cites *United States v. Salerno*, 481 U.S. 739 (1987), as standing for the proposition that before a judge may detain a defendant, without bail, pending trial because of his dangerous propensities, the judge must afford the defendant, among other things, a full adversarial hearing, after which the judge must be convinced of the defendant's dangerous propensities by clear and convincing evidence.

Appellant is being held on bail and is entitled to release upon posting the bail amount. Had the Guam Legislature

intended to authorize no bail pre-trial detention of defendants for public safety purposes, or for any other purpose, it could have enacted preventive detention provisions similar to those contained in the Federal Bail Reform Act of 1984. Without such provisions, we need not decide whether the preventive detention safeguards of the Federal Bail Reform Act of 1984 are constitutional requirements.¹ Furthermore, the Guam release statutes are not based upon the Federal Bail Reform Act of 1984, reviewed in *Salerno*, but upon the Federal Bail Reform Act of 1966 which has never been declared unconstitutional. Appellant's constitutional arguments based upon *Salerno*, therefore, do not apply in the present case

¹We reject Appellant's contention that because "danger to the community" is included as a factor within § 40.15, the section, despite its stated purpose, in effect, authorizes pre-trial preventive detention. If a judge ignores the stated purpose of a statute and instead uses the statute to achieve some unauthorized purpose, clearly the judge is applying the statute improperly. Misuse of legislation in this manner is not to be condoned. A judge is always expected to apply a statute in the manner its provisions prescribe. The due process violations that Appellant alleges in the instant case are premised upon the **possibility** that 8 G.C.A. § 40.15 may be applied in a manner not authorized by the statute. This possibility does not support an attack upon the constitutionality of the statute itself.

[6] Title 8 G.C.A. § 40.80(b) requires that bail orders of the lower court be affirmed if "supported by the proceedings below." This language is contained in the Federal Bail Reform Act of 1966, subsequently repealed by the Federal Bail Reform Act of 1984.

[7] Federal circuit courts dealing with appeals under the provision of the 1966 Act upon which § 40.80 is based have repeatedly interpreted the language of the provision as calling for an "abuse of discretion" standard of review. *See e.g.*, *United States v. Thibodeaux*, 663 F.2d 520 (5th Cir. 1981); *United States v. Skipper*, 633 F.2d 1177 (5th Cir. 1981); *United States v. Wright*, 483 F.2d 1068 (4th Cir. 1973); *Kaufman v. United States*, 325 F.2d 305 (9th Cir. 1963). The Fifth Circuit has even applied the abuse of discretion standard of review to bail decisions under the new Federal Bail Reform Act of 1984 which repealed the "supported by the proceedings below" language. *See e.g.*, *United States v. Morris*, 974 F.2d 587 (5th Cir. 1992); *United States v. Hare*, 873 F.2d 796 (5th Cir. 1989); *United States v. Jackson*, 845 F.2d 1262 (5th Cir. 1988); *United States v. McConnell*, 842 F.2d 105 (5th Cir. 1988); *United States v. Fortna*, 769 F.2d 243 (5th Cir. 1985). The decision of the Fifth Circuit to retain the standard of review prescribed by the now repealed Federal Act

was specifically addressed in *McConnell*

The setting of bail is a matter committed to the sound discretion of the district court. We review the exercise of that discretion only for abuse. *United States v. Golding*, 742 F.2d 840 (5th Cir. 1984). That standard of review was applicable prior to the 1984 Bail Reform Act and its amendments. We conclude that it is still the proper standard of review.

McConnell, 842 F.2d at 108-109. We have reviewed these cases, and conclude that this Court will review decisions of the trial court appealed under 8 G.C.A. § 40.80, for abuse of discretion.

[8] Appellant argues that the bail amount of one million dollars (\$1,000,000.00) imposed in his case is excessive in violation of the Eighth Amendment. We disagree.

[9] The test for excessiveness of bail is not whether a defendant is financially able to satisfy the requirement, *United States v. McConnell*, 842 F.2d 105, 107 (5th Cir. 1988); *United States v. Beaman*, 631 F.2d 85, 86 (6th Cir. 1980), but whether bail is set at an amount higher than reasonably calculated to assure the presence of the accused. *Salerno*, 481 U.S. at 752; *Stack v.*

which held as follows:

Boyle, 342 U.S. 1, 5 (1951). Having reviewed the record on appeal, we do not find that the Superior Court abused its discretion in imposing one million dollars (\$1,000,000.00) bail, and in denying Appellant's motions for release. In accordance with the requirements of 8 G.C.A. § 40.50, the judge in this case issued a written Bail Order detailing his reasons for continuing the bail condition as originally set. The Bail Order describes the information the judge relied upon in deciding upon the bail amount. This information, most of which was presented by counsel for Appellant in response to questions from the judge, supports the conclusion that Appellant is a substantial flight risk.

[10] Based upon statements made by Appellant's counsel, the judge determined that Appellant is an eighteen (18) year old United States citizen with no bank account, and no personal or real property. Also based upon statements of Appellant's counsel, the judge ascertained that Appellant, at the time of his arrest, was living away from home because of a dispute with his father, and that Appellant has only been on Guam for approximately three and one half (3 ½) years.

[11] The judge also focused upon the seriousness of the crimes with which Appellant has been charged, and the "distinct" possibility that Appellant will be convicted of these crimes. The record reveals that the evidence against Appellant is strong. The record also reveals that Appellant's trial is set for 10 September 1996, six weeks from the date of the hearing at which Appellant's motion for release was denied. If convicted, Appellant stands to serve a mandatory sentence of life imprisonment without parole.

[12] These factors alone adequately support the judge's conclusion as stated in the Bail Order that "defendant has tremendous motivation to flee the jurisdiction." We find

the judge's order in this case to be supported by the proceedings below. Accordingly, the order of the Superior Court is AFFIRMED.

SO ORDERED this 11th day of September, 1996.

JANET HEALY WEEKS
Associate Justice

MONESSA G. LUJAN
Associate Justice

PETER C. SIGUENZA
Chief Justice