IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,	)	Supreme Court Case No. CRA97-018
	)	Superior Court Case No. CM0359-96
Plaintiff-Appellant,	)	
	)	
vs.	)	
	)	**OPINION**
PETER G. R. PALOMO,	)	
	)	
Defendant-Appellee.	)	
	)	

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Appeal from the Superior Court of Guam

Argued and Submitted on May 3, 1998

Hagåtña, Guam

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BEFORE: PETER C. SIGUENZA, Chief Justice; JANET HEALY WEEKS, and BENJAMIN J. F. CRUZ, Associate Justices.

CRUZ, J:

[1] The court reviews this matter pursuant to an appeal from the Superior Court after the trial court dismissed the case based on the People's failure to charge out the case prior to the "notice to appear" date given to the Defendant-Appellee at the time when he was booked and released. The People contend that they are given great discretion for charging out cases and that they are not controlled by the notice to appear date. The trial court, having previously ruled on the same issue, found that the applicable statute requires the People to make a determination prior to the notice to appear date to either file a complaint in the case or, if no complaint is to be filed, to make reasonable efforts to notify the defendant that appearance on the notice to appear date is unnecessary. As a result, the trial court dismissed the case against the Defendant-Appellee with prejudice. The court agrees with and adopts the trial court's interpretation of the applicable statute. The trial court's dismissal of the case is hereby AFFIRMED.

FACTUAL AND PROCEDURAL BACKGROUND

[2] The Defendant, Peter Gerard Roberto Palomo, was arrested for Driving Under the Influence of Alcohol (DUI) on August 28, 1995. The Defendant was also subjected to a breath test which yielded a result of greater than .08% B.A.C. The Defendant was booked and released and given a copy of a "Notice to Appear" ordering him to appear before the Superior Court on November 29, 1995. On the date of his notice to appear the Defendant had not been previously served with a Complaint pursuant to 8 GCA § 45.20 (1993), nor was the Defendant advised not to appear. On March 19, 1996, the Government filed a Complaint with supporting affidavit of probable cause charging the Defendant with DUI, as a misdemeanor, and Driving While Having .08% or More of Alcohol. On March 21, 1997, the Defendant filed a motion to dismiss based on the People's failure to timely issue a complaint or inform the Defendant not to appear pursuant to 8 GCA § 25.30 (1995).

The court heard arguments and on August 21, 1997 issued a written decision and order on August 28, 1997 dismissing the case with prejudice. A timely notice of appeal was then filed on September 24, 1997.[1]

ISSUES

[3] The People raise the following issues on appeal: (1) The issues presented in the case are not properly before the court because the trial court erred in ignoring binding precedent. (2) Whether the trial court erred in dismissing the case with prejudice based on the defendant's claim of untimely prosecution.

ANALYSIS

[4] Jurisdiction over this matter is vested in the court through 48 U.S.C. § 1424-3(d) (1984) and 7 GCA § 3107(b) (1994). Questions of statutory interpretation are reviewed *de novo*. *People v. Quichocho*, 1997 Guam 13, ¶ 3.

I.

[5] The People take the position that the case is not properly before the court because the trial court failed to recognize and follow binding precedent. This argument is curious to begin with as it is the People who are appealing the decision, yet they claim that the case is not properly before the court. The People contend that the trial court erred by not following binding precedent set by the Appellate Division in the case of *People v. Wakugawa*, Crim. No. CR96-00052A (D. Guam App. Div. July 3, 1997).

[6] The court has spoken to the issue of how Guam's trial courts are to treat issues which have

[1]As this decision and order effected a dismissal, it is clear that it was intended as a final disposition of the case. Final disposition of the case enables this court to obtain and exercise jurisdiction over the matter and properly review the issues on appeal.

not yet been addressed by this court. *See People v. Quenga*, 1997 Guam 6; *Sumitomo Constr. v. Zhong Ye, Inc.*, 1997 Guam 8. The People cite to *Quenga* to indicate that the trial court erred in not following the established precedent set by *Wakugawa*. Although we indicated that the Appellate Division opinions were to be binding upon the trial courts, the *Quenga* opinion also stated that such decisions are only persuasive and not controlling on this court's interpretation of the law. *Quenga*, 1997 Guam 6, ¶ 13, n. 4.[2] In order to avoid a vacuum in the law, the court has espoused the philosophy that Guam's trial courts should continue to recognize Appellate Division decisions as binding precedent unless and until the Supreme Court has been presented with the opportunity to review and rule on those issues. *Id.*

[7] We realize that trial courts may not always agree with precedent and, accordingly, apply their own independent reasoning to similar cases; however, trial courts rule against precedent at their own

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[2] [T]his Court does not recognize the decisions of the Appellate Division as controlling our construction of law. We consider its opinion as precedent that is binding upon the trial courts of Guam, but these decisions, like those of the Court of Appeals, are considered persuasive authority when we consider an issue. In providing for a Supreme Court of Guam, Congress adopted a model that puts Guam on a par judicially with the several States, which grants this Court the authority to interpret Guam's laws. The decisions of this Court will be reviewed in due time and course by the Supreme Court of the United States alone. *See* 48 U.S.C. §1424-2 (1994) (also providing a period of fifteen (15) years during which the Ninth Circuit Court of Appeals retains certiorari review of this Court's decisions). . . . It should be underscored that the creation of the Supreme Court of Guam did not erase preexisting case law. Precedent that was extant when we became operational continues unless and until we address the issues discussed there. *We will not divert from such precedents unless reason supports such deviation* . . . . (emphasis added).

Quenga, 1997 Guam 6, ¶ 13, n. 4.

peril.[3] Appellate courts are to review such rulings and the trial courts risk being summarily overturned in the process. In this case, the trial court seemed to rule on the assumption that the justices of this court would follow its reasoning, as two of the current Justices on the Supreme Court had previously ruled similarly while sitting as trial court judges. Such reliance was a risk as there were no assurances that those two particular Justices would sit on the panel in this particular case. The court in no way encourages the practice of ignoring precedent; however, the court will consider issues on review, determine the soundness of the reasoning, and, ultimately, formulate its own interpretation of the law.[4]

[8] We appreciate the fact that the trial court, in its Decision and Order, took great pains to explain why it was dismissing the case with prejudice, despite the precedent set by *Wakugawa*. The trial court provided a thorough legal analysis of the issue and explained why the *Wakugawa* analysis should not be applied in the case now before us. Such reasoning is necessary as it provides the court with a valid good faith basis as to why the trial court ruled in a manner inconsistent with precedent.

II.

[9] The case revolves around a prior trial court decision which was appealed to the District Court on the same issue of the People's compliance with 8 GCA § 25.30. In the case of the *People v.*

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[3] Though it is generally regarded improper for an inferior court to anticipate the overruling of a decision, there is no practical way of preventing it without penalizing the party for the precience [sic] of the judge. ***Thus the system of hierarchical obedience depends almost wholly on the good faith of the inferior courts.*** (emphasis added).

1B MOORE, *supra* ¶ 0.402[1].

[4] Even a judgment of a lower court that is inconsistent with appellate decisions to which the lower court owes obedience, is nonetheless valid and enforceable unless it is reversed on appeal. Nor does the failure to follow binding precedent guarantee reversal on review by a higher court for the appellee is free to argue that the reviewing court should overrule the precedent.

1B JAMES WM. MOORE ET AL., FEDERAL PRACTICE ¶ 0.402[1] (1983).

Wakugawa, Crim. No. CR-96-00052A (D. Guam App. Div. July 3, 1997), the court reversed the Superior Court's ruling of dismissal with prejudice of misdemeanor charges after the People failed to file a complaint before the notice to appear date given to the defendant upon booking. The statute provides as follows:

> **Notice to Appear. Where Delivered.**
>
> The officer shall forthwith deliver the copy of the notice to appear to the prosecuting attorney charged with the duty to prosecute the offense charged. At or before the time at which the person promised to appear, if the prosecuting attorney determines that the offense should be prosecuted, he shall file the notice to appear and a complaint and affidavits which satisfy the requirements of § 45.20 in the court in which the person has promised to appear. If the prosecuting attorney determines that the offense should not be prosecuted he shall make a reasonable effort to notify the person arrested that the appearance will not be required.

8 GCA § 25.30. The question the *Wakugawa* court addressed was whether section 25.30 creates a *de facto* statute of limitations. *Wakugawa*, Crim. No. CR96-00052A (D. Guam App. Div. July 3, 1997). The Appellate Division reasoned that although the code section was modeled after California Penal Code § 853.6 (West 1956), case law interpreting section 853.6 was not helpful because of the later amendments to that statute. *Id.* Therefore, the *Wakugawa* court turned to the plain language of the statute and opined that the statute did not create a *de facto* statute of limitations. *Id.* Instead, the Appellate Division specified action to be taken on the disposition of the case in the event that a decision had been made prior to the notice to appear date. *Id.* Because of the creation by the Legislature of a one (1) year statute of limitations for all non-felonies[5], the court found that no further requirement was intended to be created beyond the existing one year limit. *Id.*

[10] The trial court below, in the *Wakugawa* case, interpreted the statute differently by reading into it mandatory language of what action is required of the People before the notice to appear date. *People v. Wakugawa*, CM0071-96 (Super. Ct. Guam May 1, 1996). The trial court believed that reading the statute to provide discretionary authority on the part of the Government concerning whether and when to file a complaint and strictly adhering to the one year requirement of section 10.30 gives no effect to the language used in section 25.30. *Id.* Furthermore, the trial court indicated that the Guam Supreme Court is the ultimate authority on the interpretation of section 25.30 and that it accepted the philosophies or practices of two of the sitting Justices, made while they were judges,

[5]The prosecution of misdemeanors holds a statute of limitations of one year from the date the offense is committed. 8 GCA § 10.30 (1993).

to dismiss cases for failure to comply with section 25.30.[6]

[11] The threshold issue, however, is a question of whether, in this case, there was actually a violation or a failure to comply with section 25.30. The trial court discounted the Appellate Division's ruling in *Wakugawa* on the basis that it had failed to recognize or address previous Guam Superior Court decisions. Although not bound by the Superior Court rulings, the Appellate Division completely disregarded them because they were not provided as part of the record on appeal. *Wakugawa*, Civ. No. CR-96-00052A (D. Guam App. Div. July 3, 1997). In contrast, we find the analysis of the Superior Court cases to be persuasive.

[12] In *People v. Kapileo*, CM0772-91 (Super. Ct. Guam May 6, 1996), the court dismissed the case without prejudice for failure of the prosecution to comply with the mandatory terms of section 25.30. However, in *Kapileo*, the non-compliance focused on the amalgam of two separate and contravening methods of statutory criminal procedure for charging out a case which, although a procedural problem, results in substantive consequences. *Id.* The failure to do so in that case led the court to dismiss the action. *Id. See also People v. Lovan*, CM0675-89 (Super. Ct. Guam June 29, 1990) (The court dismissed the action once again because of a failure to comply with the provisions of 8 GCA § 25.30. Although that case involved a speedy trial issue which resulted from the non-compliance, the trial court ruled that the non-compliance warranted dismissal).

[13] In *Wakugawa*, the Appellate Division did not look to California case law interpreting section 853.6 because it had later been amended to read differently than the current Guam law. In this case,

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[6]Although the facts of the Superior Court cases over which the Justices presided are somewhat different, triggering other issues of speedy trial violations and non-compliance with other portions of section 25.30, the Justices consistently found that it was within their inherent powers to dismiss the case, even though the statute provided no specific remedy or authority to do so. The trial court, in *People v. Harris*, CM0856-94 (Super. Ct. Guam, Mar. 9, 1995) (oral ruling), issued an oral ruling granting dismissal with prejudice for non-compliance with section 25.30. The facts of the case were similar to this one; however, the government filed the complaint about a week before the notice to appear date which had been set six months from the time of arrest. *Id.* The defense argued that the defendant's due process rights were prejudiced and his right to a speedy trial was jeopardized due to the lengthy delay of time and the uncertainty of the defendant as to whether he was going to be prosecuted. *Id.* Similarly, another trial court in *People v. Song*, CM0141-89 (Super. Ct. Guam May 20, 1993) (dismissal order) dismissed, with prejudice, the case based on the same reasoning as in the *Harris* case.

what the trial court espoused was the idea that it is important to look to the California law and to the subsequent amendment because such amendment was necessary to give meaning to the previously poorly constructed provision which acted to bar prosecution, as it would also in this case if we are to subscribe to its plain meaning. The California court interpreted the statute, prior to the amendment, to bar prosecution for non-compliance with the statute. *Wallace v. Municipal Court*, 140 Cal. App. 3d 100, 105, 189 Cal. Rptr. 886 (1983) (holding that section 853.6 provided a mandatory bar to prosecution regardless of any showing of actual prejudice). The effect of the amendment to the statute was to delete the barring provision. Additionally, it provided a remedy for failure to file a complaint within the statutorily prescribed period to require the prosecution to file a separate citation or arrest warrant in order to further prosecute the individual. *People v. Domagalski*, 214 Cal. App. 3d 1380, 1385, 263 Cal. Rptr. 249, 252 (1989).

[14] Upon considering the Appellate Division's and the trial court's analyses of the statute and the relevant case law, this court finds no error in the trial court's reasoning and interpretation of the applicable statute. Two options are available to the People in choosing how to prosecute a case. First they can proceed pursuant to 8 GCA §§ 15.10 and 15.20 by filing a complaint with affidavits to establish probable cause so that a summons will issue. In that event, section 10.30 would govern the time-line within which the case may be prosecuted. Alternatively, the People may proceed pursuant to section 25.30. Consequently, after issuing a notice to appear, the People are bound by the language of that statute. The language of section 25.30 is clear. The statute mandates action to be taken by the People prior to the notice to appear date— either to file the notice to appear and a complaint with affidavits or to make reasonable efforts to notify the defendant that he need not appear. While it is true that the decision on whether to prosecute a case is within the discretion of the prosecuting attorney, this discretionary authority is not unlimited. Instead, certain limitations are placed upon that discretionary authority as evidenced by both sections 25.30 and 10.30. As it is now, section 25.30 does establish a *de facto* statute of limitations. The court's dismissal of this action essentially provides no remedy for the People to regain the power to prosecute the case. Therefore,

we hold that the trial court acted properly in dismissing the case against the Defendant-Appellee based on the People's failure to adequately comply with the mandates of 8 GCA § 25.30.

III.

[15] The second issue is whether the court has the authority to dismiss a case with prejudice. In the absence of any other remedies, courts are able to fashion procedural rules they determine fair and just when "rights would be lost or the court would be unable to function." *James H. v. Super. Ct. Of Riverside County*, 77 Cal. App. 3d 169, 175, 143 Cal. Rptr. 398, 401 (1978).

[16] In previous Superior Court cases which ordered dismissal with prejudice, speedy trial issues arose which gave rise to actual prejudice to the defendants. *See Lovan*, CM0675-89 (Super. Ct. June 29, 1990) (the trial court addressed a speedy trial issue and went through an analysis of the substantial prejudice to the defendant which was weighed heavily against the People). In *Kapileo*, the trial court dismissed the case without prejudice; however, we view this remedy as ineffectual.[7] CM0772-91 (Super. Ct. Guam May 6, 1996).

[17] Although dismissal may have been the proper remedy in this case, dismissal with prejudice is generally a harsh result. However, the circumstances of this case warrant such dismissal. There is no question that section 25.30 acts to bar prosecution. This is precisely why California later amended its statutory scheme to provide both a remedy for non-compliance with Cal. Penal Code § 853.6 and deletion of the barring provision of that same statute. To dismiss this case without prejudice is ineffective. By dismissing a case to begin with, the trial court cuts off any other possible remedy for prosecution that the People would have. Under this court's interpretation, the *de facto* statute of limitations had expired and, additionally, the statute of limitations prescribed by section 10.30 has long since expired as well. It is useless for a trial court to dismiss such a case without

[7]It should also be noted that the defendant in *Kapileo* was never recharged by the People for the same offenses in CM0772-91, although the case was dismissed without prejudice. We view this inaction to be due, at least in part, to the fact that such dismissal, even without prejudice, provided the People with no recourse under the statutory scheme.

prejudice.[8] Although a harsh result may occur, the problem exists not within the judicial system, but instead with the Legislature where the sole remedy lies in the amendment or repeal of section 25.30. It is impossible for this court to make sense out of an ill-conceived statutory scheme.

CONCLUSION

[18] Based on the foregoing, we AFFIRM the trial court's decision dismissing the case with prejudice. The court's ruling in this case shall have bearing on all pending cases and future matters which fall under 8 GCA § 25.30.

BENJAMIN J. F. CRUZ, Associate Justice

JANET HEALY WEEKS, Associate Justice

PETER C. SIGUENZA, Chief Justice

[8]The court is mindful of the fact that case law exists in which courts have addressed the issue of dismissals with prejudice as opposed to dismissals without prejudice. *See People v. Marada*, Crim. No. CR94-00070A, 1995 WL 604365 (D. Guam App. Div. Sept. 18, 1995). Because this situation involves a statutory bar to re-prosecution, a showing of prejudice or any other factors which support dismissal with prejudice are unnecessary. We need not and will not address dismissals which are not statutorily based at this time.