IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,	)	Supreme Court Case No. CVA97-024
	)	Superior Court Case No. CF0318-96
Plaintiff,	)	
	)	
vs.	)	
	)	
VINCENT ROSARIO MANIBUSAN,	)	**OPINION**
	)	
Defendant,	)	
	)	
CALVIN E. HOLLOWAY, SR., ATTORNEY GENERAL OF GUAM,	)	
	)	
Objector-Appellant.	)	
_____	)	

Filed: November 6, 1998

Cite as: **1998 Guam 22**

Appeal from the Superior Court of Guam

Argued and Submitted on 19 February 1998

Hagåtña, Guam

Appearing for the Appellant:
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BEFORE: PETER C. SIGUENZA, Chief Justice; JANET HEALY WEEKS and JOAQUIN C. ARRIOLA, SR., Associate Justices.

WEEKS, J.:

[1] This matter was brought before this court pursuant to the Appellant's, the Attorney General of Guam, appeal of sanctions imposed on the Prosecution Division of the Attorney General's Office (hereinafter the "Prosecution") for its failure to provide discovery to the defendant as ordered by the trial court. The Appellant appealed the sanctions arguing that the trial court lacked authority to impose such monetary sanctions and claiming that even if the trial court did possess such authority the sanctions imposed were an abuse of discretion. The court finds that the trial court does in fact possess the authority to impose such monetary sanctions; however, the court also abused its discretion in this instance. Therefore, the order is VACATED.

FACTUAL AND PROCEDURAL BACKGROUND

[2] The Defendant, Vincent Rosario Manibusan, was indicted for First and Second Degree Criminal Sexual Conduct on 4 June 1996. The trial court ordered the mutual exchange of discovery by the parties to occur at least ten days before the trial date and reminded the parties of the continuing duty of disclosure pursuant to 8 GCA § 70.40 (1993). Additionally the trial court ordered that all police reports were to be produced to the Defendant by 20 June 1996 at five o'clock in the evening. A jury trial was set for 25 July 1996.

[3] On 25 July 1996, the parties were present for the trial and jurors were called in. Defense counsel requested a continuance based on the Prosecution's failure to provide full discovery, the prosecutor's desire to amend the indictment and a mistaken belief, by defense counsel, that the trial was to begin on the following day. The Prosecution had provided the Defendant with some discovery, including police reports, prior to the trial date and in accordance with the trial court's orders. However, several pages of a police report were not included as well as a videotape of an

interview of the victim by Healing Hearts. The missing pages of the police report were provided to defense counsel on 23 July 1996 and the defective videotape was provided on 25 July 1996.

[4] A protracted dialogue between the court and the parties resulted in the Prosecution's moving for a dismissal without prejudice pursuant to 8 GCA § 80.70 (1993) and defense counsel's moving to dismiss the indictment with prejudice. The trial court dismissed the indictment without prejudice. The trial court then proceeded to sanction the Prosecution in the amount of three thousand two hundred and seventy dollars ($3,270.00), the amount of the jurors fees incurred for that day. The Defendant, on 5 August 1996, filed an appeal with this court, but such appeal was withdrawn on 19 December 1996. On 9 August 1996 the People filed a Motion for Reconsideration on the issue of the monetary sanctions. The trial court denied that motion. The then Attorney General of Guam, Calvin E. Holloway, Sr., Objector and Appellant subsequently filed a timely Notice of Appeal on 9 June 1997.

ANALYSIS

[5] The issue here is whether, and under what circumstances, it is within the authority of a trial judge to impose monetary sanctions on the Prosecution in a criminal case. This issue is novel in the sense that it has not been previously addressed by an appellate court in a case arising from the Superior Court of Guam.[1]

[6] The court has jurisdiction over this matter pursuant to 7 GCA § 3107(b) (1994) and 48 U.S.C. § 1424-3(d) (1988). Whether the trial court possessed the authority to impose monetary

[1]The Appellate Division has had occasion to discuss the circumstances where imposition of monetary sanctions would be appropriate, but none of these appears to be a case where such sanctions were imposed upon the prosecution in a criminal matter. *See, e.g, Nateroj v. Haruyama*, Civ. No. 91-0039A, 1992 WL 97207 at *3, (D. Guam App. Div. Apr. 16, 1992), *aff'd*, 966 F.2d 1226 (9th Cir. 1993) (discussing circumstances under which a monetary sanction can be imposed for the filing of a pleading that is frivolous or is filed for an improper purpose); *Fargo Pacific, Inc. v. Imamura*, Civ. No. CV96-0049A, 1997 WL 208983 at *6, (D. Guam 1997) (noting that added expense to a party that results from discovery violation is more appropriately addressed through monetary sanctions than through entry of a default judgment.).

sanctions against the Prosecution is a question of law reviewed *de novo*. *People v. Tuncap*, 1998 Guam 13, ¶ 11. The imposition of sanctions by the trial court for a discovery violation is reviewed for abuse of discretion. *Id.; see also Desoto v. Gov't of Guam*, Civ. No. 82-0002A, 1983 WL 30218 (D. Guam App. Div. Sept. 9, 1983). The rationale for such a deferential standard of review is as follows:

> "A trial court is empowered to exercise its supervisory power in such a manner as to provide for the orderly conduct of the court's business and to guard against inept procedures and unnecessary indulgences which would tend to hinder, hamper, or delay the conduct and dispatch of its proceedings . . . . An attorney has an obligation to respect the legitimate interests of fellow members of the bar, the judiciary, and the administration of justice."

580 Folsom Associates v. Prometheus Dev. Co., 223 Cal.App. 3d 1, 26, 272 Cal. Rptr.227, 241 (1990) (quoting *Mungo v. UTA French Airlines*, 166 Cal. App. 3d 327, 333, 323 Cal. Rptr. 369, 373 (1985)).

I.

[7] We begin our analysis by noting the absence of any provision of Guam law that directly resolves this issue. There is no express statutory authority which would permit the trial court to sanction a prosecutor for jury fees for failing to provide discovery nor do the Rules of Court provide for such authority. The court does note however, that in a civil context, the inherent power doctrine has been relied on to impose monetary sanctions against the Government for failure to appear at a pre-trial conference. *See Desoto*, Civ. No. 82-0002A, 1983 WL 30218 at *2 (D. Guam App. Div. Sept. 9, 1983). Furthermore, the interaction of various court rules, the legislative intent of several statutes and reliance on the exercise of a court's inherent supervisory powers in the conduct of a trial court provide a broad legal basis for imposing such penalties.

[8] As stated by the California Supreme Court in *Bauguess v Paine*, 22 Cal.3d 626, 365-6, 586 P.2d 942, 947, 150 Cal.Rptr. 461, 466 (1978) (holding attorney's fees was improper use of

supervisory powers), courts have certain supervisory power necessary to execute their duties. That court, in addressing the general concept of supervisory power, further pointed out that, such power, while codified, "exists apart from express statutory authority." *Id.* Likewise, the courts of Guam have inherent powers, identified through the provision of 7 GCA § 7107 (1996), which exist even absent such codification. *See Matter of Hipp, Inc.*, 895 F.2d 1503 (5th Cir. 1990)(holding that territorial courts may have inherent powers). The inherent powers have been codified at 7 GCA §7107 and permit the following:

> . . .
>
> (c) To provide for the orderly conduct of proceedings before it or its officers;
> (d) To compel obedience to its judgments, orders and process, and to the orders of a Judge out of court in an action or proceeding pending therein;
> (e) To control in furtherance of justice, the conduct of its ministerial officers and of all other persons in any manner connected with a judicial proceeding before it in every matter appertaining thereto; . . .

The Appellant argues that under *Bauguess* and *Yarnell & Assoc. v. Superior Court* 106 Cal.App.3d 918, 165 Cal.Rptr. 421 (1980), and attorney's fees are not permitted unless authorized by statute or pursuant to a contempt proceeding.[2] The *Bauguess* decision however, was influenced by the existence of statutory language which only permitted the award of attorneys' fees upon agreement of the parties or unless authorized by statute. 22 Cal.3d at 639, 586 P.2d at 950, 150 Cal.Rtr. at 469. Guam has no such limiting statute.[3]

[2]The provision was adopted from California, thus the court looks to California case law to aid in its interpretation.

[3]Guam's statute relating to the compensation of attorneys leaves such issues to the agreement of the parties or as otherwise provided by statute and does not prohibit the charging of fees in other situations. Guam' statutes do not include a provision, as was present in California at the time the *Bauguess* decision was delivered, which limits the imposition or award of attorney's fees to those situations specified by statute. Furthermore, the California Legislature amended the codification of the court's inherent power through the enactment of section 128.5. Section 128.5 was added to expressly permit the issuance of attorneys' fees as a sanction; it was just another codification of the court's power to issue sanctions, after the *Bauguess* court narrowly interpreted the scope of the trial court's inherent powers. The enactment of section 128.5 could be construed as the Legislature's correction of an erroneous construction by the court.

[9] We think that this court can and should avoid the narrow construction given section 128 by the California Supreme Court in *Bauguess* and *Yarnell*. We note that certain inherent powers exist which have defied codification, while others have been codified and repealed.[4] As one jurisdiction has stated:

> Undoubtedly, courts of justice possess powers which were not given by legislation and which no legislation can take away. These are 'inherent powers' resident in all courts of superior jurisdiction. These powers spring not from legislation but from the nature and constitution of the tribunals themselves.

State of Arizona v. Superior Court, 275 P.2d 887, 889 (Ariz. 1954)

[10] California authority supports the imposition of monetary sanctions in the absence of statutory provisions or court rules. *Santandrea v. Siltec Corp.*, 56 Cal.App.3d 525, 128 Cal.Rptr. 629 (1976) *overruled by Bauguess v Paine*, 22 Cal.3d 626, 586 P.2d 942, 150 Cal.Rptr. 461 (1978); *see also Fairfield v. Superior Court*, 246 Cal.App.2d 113, 54 Cal.Rptr. 721 (1966). In these cases, attorneys fees were awarded to compensate a party for unnecessary legal work occasioned by the conduct of the offending party. On Guam, the Appellate Division has likewise relied on the inherent power doctrine to impose monetary sanctions to compensate a party for unnecessary legal work.[5] *See Desoto*, Civ. No. 82-0002A, 1983 WL 30218 (D. Guam App. Div. Sept. 9, 1983). We therefore find, as a matter of law, that the trial court may rely on its inherent powers to impose monetary sanctions.

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[4]The Appellant argues that 8 GCA § 70.45 (1993) was derived from ABA Standard § 4.7 that contained a subsection which provided "the court may subject counsel to appropriate sanctions upon a finding that counsel willfully violated the rule or order." This section was omitted from the local statute when enacted. The Appellant argues, presumably, that this omission was purposeful and that section 70.45 does not provide statutory authority for the trial court to impose monetary sanctions. However, we find that the power to sanction is an inherent power vested in the trial courts and that such cannot be divested by statute. Therefore, we deem it unnecessary to delve into the legislative history behind the enactment of section 70.45.

[5]Federal courts possess the inherent power to assess attorneys fees. *See, Barnd v. City of Tacoma*, 664 F.2d 1339 (9th Cir. 1982). While the courts of Guam may not be Article III courts like the Federal District Courts, they are federal courts nonetheless in the sense that they are created by Congress under Article IV of the Constitution. *See, Matter of Hipp, Inc.*, 895 F.2d 1503 (5th Cir. 1990). However, such sanctions can only be issued only upon a showing of recklessness, bad faith or wilfulness. *Zambrano v. City of Austin*, 885 F.2d 1473 (9th Cir. 1989).

II.

[11] The imposition of sanctions by the trial court is reviewed for abuse of discretion. *Tuncap.* at ¶ 11. "[W]hen the record contains no evidence supporting a court's decision, the standard is violated." *Id.* at ¶ 13. Personal liability should be imposed only where the court finds counsel's conduct demonstrates either "an intentional departure from proper conduct, or, at a minimum, from a reckless disregard of duty owed by counsel to the court." *U.S. v. Ross*, 535 F.2d 346, 349 (6th Cir. 1976) (interpreting the term "vexatious" as used in federal statute 2 U.S.C. § 1927). Monetary sanctions should not be imposed for mere inadvertence, mistake or error of judgment. *Zambrano v. City of Tustin*, 885 F.2d 1473, 1480 (9th Cir. 1989) (citation omitted).

[12] In *Ross*, counsel failed to appear on the day of trial and failed to notify the court that he would be unable to appear due to the necessity of his appearance at an on-going murder trial. 535 F.2d at 347. The power to sanction for district courts is codified in a federal statute which requires an attorney to personally satisfy costs when he "so multiplies the proceedings in any case as to increase costs unreasonably and vexatiously." *Id.* The district court sanctioned the attorney in an amount representing the cost associated with summoning forty-two (42) jurors. *Id.* at 348. The district court noted that defense counsel's conduct was neither purposeful or malicious. *Id.* at 349. Without a finding of at least a reckless disregard for counsel's duty to the court, the appellate court ruled that the imposition of the sanctions, in that case, was improper. *Id.*

[13] In the instant case, the record on appeal gives little enlightenment as to why the trial court was imposing sanctions against the Prosecution saying only that there was a failure to comply with the court's previous discovery orders.[6] Actually, the trial court dismissed the case due to a defective indictment and not as a result of the finding of discovery violations. In effect, the discovery

[6]The trial court ordered the sanctions pursuant to 8 GCA § 70.45 which allows the court to issue orders it deems just for failure of compliance with a previous order by the court.

violations became moot with the dismissal of the case. From what we can glean from the record, the Prosecution did not offer any explanation as to why it failed to comply with the court's discovery orders, but did make representations that it made good faith efforts to provide defense counsel with discovery in a timely fashion. There is no indication in the record that the trial court made findings that the Prosecution had acted in bad faith or even with reckless disregard for counsel's duty to the court. There simply is no articulable justification for the sanctions.

III.

[14] Had the court made appropriate findings supporting the imposition of sanction in this case, there would remain the issue of whether the jury fees, amounting to several thousand dollars, were properly assessed against counsel. In *Tuncap*, 1998 Guam 13 at ¶ 25, this court adopted the following test which set out four factors to consider when examining the propriety of the sanctions imposed by the trial court: "1) reasons why the disclosure was not made; 2) the extent of the prejudice, if any, to the opposing party; 3) the feasibility of rectifying that prejudice by a continuance, and 4) any other relevant circumstances."[7] In the instant case, defense counsel argued that the delay of production of discovery affected his ability to defend his client. However, the court, in its written Decision and Order failed to make any specific findings that prejudice had resulted. Since there was no showing of prejudice, there can be no determination under *Tuncap* as to whether the alleged prejudice could have been rectified by other more appropriate sanctions.

[15] Beyond the *Tuncap* analysis, the issue arises as to whether the imposition of jury fees is even a permitted sanction under any circumstances. The Ninth Circuit Court spoke to the district court's imposition of jurors fees in the *Zambrano* case finding "it inappropriate for the court system to claim 'compensation' for being 'ill-used.'" 885 F.2d at 1480. "The court system is not a private party that

[7]At the time the trial court imposed sanctions in this case, the *Tuncap* opinion had not yet been issued; thus, the trial court did not conduct a *Tuncap* analysis.

needs to be reimbursed for its inconvenience." The court there recognized the inherent and statutorily based authority of the court to sanction attorneys for misconduct based upon findings of bad faith. *Id.* at 1479. However, in speaking to the propriety of juror's fees as sanctions, the court espoused a rule that such were allowable if grossly negligent, reckless, or willful conduct could be shown. *Id.* at 1480.

[16] Taking the opposite view, the court in *Ross* stated that jurors fees were not properly sanctionable costs within the meaning of the word "costs" under section 1927. *Ross,* 535 F.2d at 350. The court adopted this interpretation of the term "costs" within the meaning of the statute to mean taxable costs of which jurors fees do not qualify. *Id.*

> We do not find any authority for holding that such governmental expense can be taxed against one convicted of a criminal offense as "costs of the local prosecution" in the absence of statute or established local practice. The expression "costs of prosecution" means such items of costs as are taxable by statute or by established practice or rule of court based on statute, and in the federal courts, where no federal statute is found to be directly applicable, recourse may sometimes be had to the statutes and practice of the state. *See Henkel v. Chicago*, St. P., M. & O. Ry. Co., 284 U.S. 444, 52 S.Ct. 223, 76 L.Ed. 386, *Ex parte Peterson*, 253 U.S. 300, 316, 40 S.Ct. 543, 64 L.Ed. 919, *U.S. v. Minneapolis, St. P. & S. M. Ry. Co. (D.C.)*, 235 F. 951, 954, and cases cited in these opinions. It does not include the general expense of maintaining the system of courts and the administration of justice, all of which is an ordinary burden of government. That the enumerated items could not be taxed as costs was expressly held in *United States v. Murphy* (D.C.) 59 F.2d 734, and we are satisfied with the conclusions concerning taxation of costs there indicated. *See, also, U.S. v. Wilson* (C.C.) 193 F. 1007; *State v. Morehart,* 149 Minn. 432, 434, 183 N.W. 960; *Board of Com'rs v. Board of Com'rs*, 84 Minn. 267, 269, 87 N.W. 846; *McLean v. People*, 66 Colo. 486, 497, 180 P. 676; *Saunders v. People*, 63 Colo. 241, 165 P. 781; *People v. Kennedy*, 58 Mich. 372, 373, 25 N.W. 318; *Stanton County v. Madison County*, 10 Neb. 304, 308, 4 N.W. 1055, *citing* 1 Bouvier Law Dict. 370; Corpus Juris, vol. 15, s 833, page 330.

Id. at 351, *quoting Gleckman v. United States,* 80 F.2d 394, 403 (8th Cir. 1935), *cert. denied*, 297 U.S. 709, 56 S.Ct. 501 (1936). Also mentioned in *Ross* was the illogical ramification of allowing the imposition of jurors fees as a sanction.

> It the district court's analysis were carried to its logical conclusion, an attorney who caused the proceedings to be extended "unreasonably and vexatiously" could be required to pay the pro rata salaries of the judge, his staff, the U.S. Attorney and marshals, in addition to the expenses for any witnesses called. We do not believe that the statute was mean to include such costs.

Id. at 351, n. 3.

[17] We agree that while it is within the court's discretion to impose sanctions it deems just, the imposition of sanctions to cover juror's fees is not appropriate. We do acknowledge and understand that mustering a hundred or so jurors at thirty ($30.00) dollars a piece to be sent home without serving when the Government dismisses its case is extremely expensive for the court and frustrating for judges. This court rejects the *Zambrano* analysis and instead adopts the rule that disallows the imposition of jurors fees and other court administrative related costs as proper sanctions. This rule embraces the holdings of the Sixth, Seventh and Eighth Circuit Courts as well as courts of other jurisdictions. *See Ross*, 535 F.2d at 351. Incurring jurors fees is a normal function of the court's business and such expenses are not attributable to the parties and thus no party should be made to indemnify the court for such expenses. *Id.*

CONCLUSION

[18] We find that the trial court possesses inherent authority to impose sanctions against attorneys. However, the standard for imposing such sanctions must be met. The trial court must make a finding of at least recklessness on the part of the attorney. Therefore, based on the foregoing, although it is within the trial court's inherent authority to impose sanctions against the Prosecution for failure to comply with discovery, the record does not indicate that the imposition of such sanctions in this case was appropriate. Furthermore, the type of sanctions imposed here, jury costs, is unauthorized. The sanctions imposed by the trial court are hereby VACATED.

JANET HEALY WEEKS
Associate Justice

JOAQUIN C. ARRIOLA, SR.
Associate Justice

PETER C. SIGUENZA
Chief Justice