

**IN THE SUPREME COURT OF GUAM**

**PEOPLE OF GUAM,** )  
 )  
 **Plaintiff-Appellant,** )  
 )  
 **vs.** )  
 )  
 **SIMON CHONG PAK,** )  
 )  
 **Defendant-Appellee.** )  
 )  
 \_\_\_\_\_ )

**Supreme Court No. CRA98-007**  
**Superior Court No. CM0642-97**

**OPINION**

Filed: December 2, 1998

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Appeal from the Superior Court of Guam

Argued and Submitted on 13 October 1998

Hagåtña, Guam

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

WEEKS, J:

[1] The People of Guam appeal the trial court's dismissal of a Driving Under the Influence charge against the Defendant in violation of 16 GCA § 18102(a)(1994). The charge of Leaving the Scene of an Accident remains pending in the trial court. We assume jurisdiction and reverse the dismissal below.

**I.**

[2] On 27 July 1996, Guam Police Officer Rodel Sevilla responded to an auto-auto collision where a black Toyota Four-Runner struck a Ford owned and operated by Ireneo Urbano. The driver of the Toyota Four-Runner fled the scene, and was later located by Officer Sevilla on Farenholt Avenue in Tamuning. The officer conducted a vehicle stop and noted damage consistent with the collision to which he had just responded. The operator of the vehicle was the Defendant Simon Chong Pak. The officer smelled a strong odor of an alcoholic beverage on Pak's breath, and noticed that Pak's eyes were bloodshot and watery. When asked by the officer if he had been drinking, Pak replied, "A little." Pak submitted to and failed a standardized field sobriety test. Pak refused to provide a blood or breath sample test for analysis, signing his name on the Guam Police Department (GPD) Implied Consent Form (ICF) for DUI (Driving Under the Influence) under Section III. C. for refusal to take a test or tests.

[3] On 9 June 1997, Pak was charged with Driving Under the Influence of Alcohol (As a

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Misdemeanor) in violation of 16 GCA § 18102(a) and with Leaving the Scene of an Accident (As a Petty Misdemeanor) in violation of 16 GCA § 3501(a) and (g)(1996). On 27 February 1998, Pak filed a Motion to Dismiss the charge of Driving Under the Influence of Alcohol, claiming that the police officer who arrested him failed to inform him that he had the option to take either a breath or blood test in violation of 16 GCA § 18203(a)(1)(1994), which required dismissal under 16 GCA § 18203(l). The trial court granted Defendant's motion by Order dated 20 March 1998. This appeal was timely filed on 20 April 1998.

## II.

[4] Defendant first argues that the Superior Court and Supreme Court are without statutory jurisdiction to hear this criminal case. The second issue is whether the Defendant was properly informed by the officer through the GPD Implied Consent Form for DUI that he had the option of taking a breath or blood test. The third issue is whether the Superior Court's dismissal of the DUI charge in violation of 16 GCA § 18203(a) was properly authorized under 16 GCA § 18203(l).

## III.

[5] The Superior Court had jurisdiction over this matter under 48 U.S.C. § 1424-1(b) (1984)<sup>1</sup> and

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<sup>1</sup> 48 U.S.C. § 1424-1(b) provides:

**(B) Local Court Jurisdiction.** The legislature may vest in the local courts jurisdiction over all causes in Guam over which any court established by the Constitution and laws of the United States does not have exclusive jurisdiction. Such jurisdiction shall be subject to the exclusive or concurrent jurisdiction conferred on the District Court of Guam by section 1424(b) of this title.

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7 GCA § 3105 (1994)<sup>2</sup>. We deem “all causes of action” under 7 GCA § 3105 to include both civil and criminal matters. Supreme Court jurisdiction is based on 7 GCA § 3107<sup>3</sup>. Defendant contends that the People’s appeal is premature under 8 GCA § 130.20(a)(5), which provides in relevant part:

(a) An appeal may be taken by the government from any of the following:

(5) An order or judgment dismissing or otherwise terminating the action before the defendant has been placed in jeopardy or where the defendant has waived jeopardy.

8 GCA § 130.20(a)(5) (1993).

[6] The order from the Superior Court dated 20 March 1998 states “that the first charge of the complaint be and it hereby is dismissed with prejudice.” Defendant argues that this is not an order or judgment dismissing or terminating the action, since Defendant was charged with two charges, leaving the second charge of Leaving the Scene of an Accident (As a Petty Misdemeanor) pending.

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48 U.S.C. § 1424-1(b) (1984).

<sup>2</sup> 7 GCA § 3105 provides:

**§ 3105. Jurisdiction of Superior Court.** The Superior Court shall have original jurisdiction over all causes of action, and, except for those causes exclusively vested in the Supreme Court, may have appellate jurisdiction as may be provided by the Legislature.

7 GCA § 3105 (1995).

<sup>3</sup> **§ 3107. Jurisdiction of the Supreme Court. (a) Jurisdiction.** The Supreme Court shall have authority to review all justiciable controversies and proceedings, regardless of subject matter or amount involved.

**(b) Additional authority.** Its authority also includes jurisdiction of original proceedings for mandamus, prohibition, injunction, and similar remedies to protect its appellate jurisdiction. The Supreme Court shall have jurisdiction of all appeals arising from judgments, final decrees, or final orders of the Superior Court in criminal cases and in civil cases and proceedings. The Supreme Court has jurisdiction over attorney disciplinary matters.

7 GCA § 3107 (1994), amended by P.L. 24-139 (1998).

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Thus, the critical question for our determination is whether an order “dismissing or otherwise terminating the action” applies to the dismissal of one count of the complaint. The derivation of 8 GCA Chapter 130 is from federal or California counterparts. *See* NOTE to 8 GCA § 130.10 (1993). Section 130.20 takes the identical language from the California statute, which has since been amended to include “any portion of the action.” *See* CAL. PENAL CODE § 1466(a)(1)(B) (West Supp. 1998)<sup>4</sup>; CAL. PENAL CODE § 1238 (a)(8) (West 1982)<sup>5</sup>. Prior California case law, however, has allowed appeal on a dismissal of one charge, recognizing that dismissal of one charge is sufficient to constitute the termination or dismissal of the “action”. *See People v. Saffell*, 74 Cal. App. 2d Supp. 967, 971, 168 P.2d 497, 500 (Cal.App.Dep’t.Super.Ct. 1946) (holding that “[s]uch an appeal from the judgment entered on one count is proper although the other counts are not disposed of.”); *People v. Davis*, 94 Cal. App. 3d 215, 220, 156 Cal. Rptr. 395, 398 (Cal.Ct.App. 1979) (holding that “[s]ection 1238, subdivision (a)(1), has been interpreted as authorizing the

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<sup>4</sup>This code section has since been amended to read:

(B) From an order or judgment dismissing or otherwise terminating **all or any portion of the action, including such an order or judgment, entered after a verdict or finding of guilty or a verdict or judgment entered** before the defendant has been placed in jeopardy or where the defendant has waived jeopardy.

CAL. PENAL CODE § 1466(a)(1)(B) (West 1998). (Emphasis added.)

<sup>5</sup>Similarly, this code section has been amended to read:

(8) From an order or judgment dismissing or otherwise terminating **all or any portion of the action including such an order or judgment after a verdict or finding of guilty or an order or judgment entered** before the defendant has been placed in jeopardy or where the defendant has waived jeopardy.

CAL. PENAL CODE § 1238(a)(8) (West 1998). (Emphasis added.)

People’s appeal from an order dismissing some but not all counts of a multi-count information.”).

We find such authority persuasive to the case at bar, and take jurisdiction under this basis.

[7] Alternatively, we may assume jurisdiction under 7 GCA § 3108(b)<sup>6</sup>. The People argue that interlocutory review will protect the People from the substantial and irreparable injury of the dismissal of the DUI and clarify issues of general importance in the administration of justice, based on inconsistent holdings of two Superior Court judges below. We distinguish this case from *People v. Quenga*, 1997 Guam 6, wherein we declined to exercise interlocutory review, stating that interlocutory appeals are generally not available in criminal cases. *Id.* at ¶ 5. There we found that legislative policy and sound precedent in the Appellate Division of the District Court of Guam precluded review of a juvenile’s prosecution as an adult. *Id.* at ¶ 24. In this case, however, as will be discussed, *infra*, we consider the issues before us to be matters of general importance, clarification of which will aid in the administration of justice, thus triggering interlocutory review.

#### IV.

[8] Questions of statutory interpretation are reviewed *de novo*. *People v. Quichocho*, 1997 Guam 13, ¶ 3. The Safe Streets Act, as codified under Title 16 Guam Code Annotated, Chapter 18,

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<sup>6</sup> 7 GCA § 3108(b) reads:

(b) **Interlocutory review.** Orders other than final judgments shall be available to immediate appellate review as provided by law and in other cases only at the discretion of the Supreme Court where it determines that resolution of the questions of law on which the order is based will:

- (1) Materially advance the termination of the litigation or clarify further proceedings therein;
- (2) Protect a party from substantial and irreparable injury; or
- (3) Clarify issues of general importance in the administration of justice.

7 GCA § 3108(b) (1994).

provide the following relevant statutes:

§ 18102(a) It is unlawful for any person, while under the influence of an alcoholic beverage or any controlled substance, or under the combined influence of an alcoholic beverage and any controlled substance, to operate or be in physical control of a motor vehicle. 16 GCA § 18102(a) (1994).

§ 18201(c) If there is probable cause to believe that a person is in violation of § 18102 of this Chapter, then the person shall have the option of using a blood or breath test for the purpose of determining the alcohol or controlled substance content of that person's blood. 16 GCA § 18201(c) (1994).

**§ 18203. Administrative Revocation or Suspension of Driving Privilege and License Procedures.** (a) If a person is arrested for a violation of § 18102 of this Chapter, on a determination by the police officer that there was reasonable cause for the arrest then (1) the police officer shall inform the person that he or she has the option of taking a blood or breath test, and (2) the police officer shall also inform the person that a refusal to submit to or a failure to complete the blood or breath test may be used as evidence against him or her in criminal proceedings, and that he or she may be subject to administrative suspension or revocation by the Department of his or her privileges and license or permit to operate a motor vehicle.

(b) The police officer complies with the requirements of § 18203(a) of this Chapter and the person refuses to submit to or fails to complete the blood or breath test, then the police officer shall within three (3) working days of the arrest sign and submit to the Department an affidavit or declaration under penalty of perjury setting forth such facts.

(c) Upon receipt by the Department of the police officer's affidavit or declaration, an administrative action shall commence and the Department shall within ten (10) working days notify the person in writing of the commencement thereof. Notice of the administrative action shall be provided to the person as follows:

- (1) By delivering a copy thereof to the person; or
- (2) By leaving a copy thereof at the person's dwelling house or usual place of abode with some person of suitable age and discretion residing therein; or
- (3) By mailing a copy thereof to the person at his or her last known address through certified or registered mail.

The notice of the administrative action shall inform the person of the matters set forth in §§ 18202 and 18203 of this Chapter.

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(e) Upon receipt by the Department of the person's written request for a hearing, the

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Department shall within five (5) working days notify the person of a hearing date in the same manner as set forth in subsection (c), (1), (2), and (3), of this § 18203. The Department shall schedule the hearing to commence within fifteen (15) working days of the person's written request for the hearing. The Director or his designee shall preside at and conduct the hearing.

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(i) At the conclusion of the initial or continued hearing, the Director or his designee shall render a decision to suspend or revoke the person's driving privilege and license or permit, as authorized under § 18202 of this Act, or to dismiss the administrative action. The decision and order of the Director or his designee shall be final but subject to judicial review.

...

(l) Failure of the peace officer or the Department to comply with the requirements in subsections (a), (b), (c), (e) or (i) of this §18203 shall result in a dismissal of the action in favor of the person.

16 GCA § 18203 (1994).

**[9]** The People assert that Defendant was properly advised of his option to take a blood or breath test, and thus there was no violation of 16 GCA § 18203(a). Officer Sevilla testified that he read the Defendant the GPD Implied Consent Form (ICF) for DUI, and asked the Defendant to read along with him. The officer stated that he read the Defendant the part of the form that states: “There is the option or choice of having either a breath or blood test”, that the Defendant understood what was read to him, and thereafter refused to take either test. The ICF was signed by the Defendant under Section III.C., where it states, “I refuse to take a test or tests.” Defendant argues that § 18203 (a) in effect requires two things: (1) that the person be informed of the option of taking a blood or breath test, and (2) that the option is his or hers. Defendant claims he was not properly informed that the option was his. He does not argue that the language is ambiguous; rather, Defendant asserts that the language of the ICF just “doesn’t do it” in that it does not inform him that the option is his.

[10] The Superior Court placed its reliance on *People v. Hickman*, CM105-97 (Super. Ct. Guam Oct. 23, 1997), where it held that the language in the GPD ICF did not statutorily conform to the mandates of 16 GCA § 18203(a)(2), which states that “the police officer shall inform the person that he or she has the option of taking a blood or breath test.” The *Hickman* court found that the language stating, “There is the option of taking either a breath or blood test” does not clearly identify who has the option. *Id.* at 5. Since then, the *Hickman* holding has been limited by the same Superior Court judge to dismissals only where Blood Alcohol Content (BAC) charges are brought against a defendant. See *People v. Simon*, CF 486-96 (Super. Ct. Guam April 15, 1996), *People v. Chance*, CM292-97 (Super. Ct. Guam May 28, 1998). Subsequently, another Superior Court judge has held that the form is unambiguous and sufficiently informs the arrestee that the option of taking a blood or breath test is his or hers. *People v. Bartosh*, CF 461-97 (Super. Ct. Guam Aug. 7, 1998).

[11] Undoubtedly the words “you have the option” clearly define who has the option when measured against the words, “there is the option.” However, the absence of the precise words “you have the option” is not critical to the ICF. A complete reading of the form shows that the language in question is surrounded by other language indicating that the choice belongs to the person and not the police officer. For example, in the same section under the pertinent language, it reads: “Under Title 16 GCA Section 18201 (f), if a person under arrest refuses to submit to a breath or blood test, none shall be given.” Under Section II, Acknowledgment of Implied Consent Law, the language reads, “I understand what is written above and have read it myself.” And “I understand what is written above because it has been read to me.” In Section III, Acknowledgment of Agreement or Refusal to Submit to Test, it reads, “I agree to take a breath test. I agree to take a blood test. I refuse

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to take a test or tests”, with a signature line after each. This language indicates that the choice does not belong to the police officer or some other third person, but to the person himself. Read in its entirety, as the officer testified he did, with the Defendant reading along, we think that there can be no other understanding but that the option belongs to the person himself. This court finds therefore that the ICF is sufficient on its face to comply with the mandates of 16 GCA § 18203(a), and that the Defendant in this case was properly informed of his option of taking a breath or blood test.<sup>7</sup>

[12] The People further argue that dismissal of the criminal charge of DUI filed pursuant to 16 GCA § 18102(a) is not authorized by 16 GCA § 18203(l). The Safe Streets Act, is divided into three Articles: (1) Offenses Involving Alcohol and Controlled Substances; (2) Implied Consent and Suspension or Revocation of Driving Privileges and Licenses; and (3) Probation and General Considerations of Probation. The People claim that Article 1 governs criminal matters, while Article 2 governs civil matters. In this case, according to the People, section 18203(l), which falls under Article 2, and which states “failure of the peace officer to comply with the requirements . . . shall result in a dismissal of the action,” cannot be used to dismiss a criminal action, since it applies only to civil or administrative matters. Defendant claims that references in Article 2 to civil matters give application to criminal matters as well. Further, Defendant asserts that since no administrative action has yet been implemented to give effect to Article 2, there is nothing to dismiss, and it should thereby apply to criminal matters.

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<sup>7</sup>In our review of the record, we note that there appears to be an effort underway by GPD to change the wording of the ICF. See Reporter’s Transcript of Proceedings on Appeal, March 19, 1998, at 27-28; see also *People v. Hickman*, CM105-97 at 5-7 (where the court recommended specific changes in the wording of the ICF). While we believe that the ICF is sufficient in its totality, any such changes should emphasize simplicity and directness.

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[13] We are not convinced that references in § 18203 to § 18102 of Article 1 entitle criminal application to § 18203 or to Article 2. The title of § 18203 which reads, “Administrative Revocation or Suspension of Driving Privilege and License Procedures,” clearly applies to administrative and civil matters. Subsections (k) and (n) of § 18203 and § 18204 involve the Superior Court only to the extent of aiding or clarifying in the administrative revocation or suspension process. We do not believe that the mere omission of the word “administrative” in subsection (l), while used in various other subsections of § 18203 gives effect to criminal matters. To give criminal application to § 18203(l) would also give criminal application to subsections (a), (b), (c), (e) and (i), upon which the dismissal sanction in subsection (l) is based. With the exception of subsection (a), within which a police officer must inform the person that refusal to submit to or failure to complete a blood or breath test may be used as evidence against the person in a criminal proceeding, a reading of these subsections leads us to believe that § 18203 is intended for administrative proceedings. We find further support in § 18206<sup>8</sup> that encapsulates the intent of the section and its effective implementation date. Moreover, nowhere in Article 2 is the dismissal of criminal proceedings authorized, whereas Article 1, § 18118<sup>9</sup> clearly provides for criminal

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<sup>8</sup>The statute provides as follows:

**§ 18206. Effective date of implementation.** The effective date to implementing the provisions of §18203 of this Chapter on the Department’s administrative revocation or suspension of driving privileges and licenses or permits of persons who refuse to submit to or fail to complete a blood or breath test shall be April 1, 1995.

16 GCA § 18206 (1994).

<sup>9</sup> 16 GCA § 18118 provides in relevant part:

**§ 18118. Dismissal of Allegation of Violation of § 18102 of This Chapter; Substitution of Lesser**

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dismissals. This reinforces our determination that § 18203 applies to administrative matters, and that the dismissal of the DUI was improper under 18 GCA § 18203(l).

V.

[14] The Implied Consent Form is sufficient on its face to inform a person that he or she has the option of taking either a breath or blood test. The Defendant was properly advised of his option to take either a breath or blood test. Section 18203 of Article 2 of the Safe Streets Act deals with administrative and civil matters, notwithstanding references to criminal proceedings. The dismissal sanction in § 18203(l), therefore, applies to administrative and civil proceedings and was improperly applied in the dismissal of the DUI. The decision of the trial court is **REVERSED** and the case is **REMANDED** for further proceedings consistent with this opinion.

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PETER C. SIGUENZA  
Chief Justice

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JANET HEALY WEEKS  
Associate Justice

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BENJAMIN J. F. CRUZ  
Associate Justice

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**Offense or Dismissal or Striking of Separate Conviction; Reasons by Court and Prosecution.**

When an allegation of a violation of § 18102 of this Chapter is dismissed by the court, an allegation of a different or lesser offense is substituted for an allegation of a violation of said § 18102, or an allegation of a separate conviction is dismissed or stricken, the court shall specify on the record its reason or reasons for the order. The court shall also specify on the record whether the dismissal, substitution, or striking was requested by the prosecution and whether the prosecution concurred in or opposed the dismissal, substitution, or striking.

...  
16 GCA § 18118 (1994).