IN THE SUPREME COURT OF GUAM

SIDNEY DULEI BORJA, Petitioner-Appellant, vs. **EDUARDO C. BITANGA, Director, Department of Corrections,** Respondent-Appellee,	Supreme Court Case No. **CVA 97-053** Superior Court Case No. **SP0051-95**
MICHAEL G. LAGUANA, JR., Petitioner-Appellant, vs. **EDUARDO C. BITANGA, Director Department of Corrections; GOVERNMENT OF GUAM; CARL T.C. GUTIERREZ, Governor of Guam; and TERRITORIAL PAROLE BOARD, Government of Guam,** Respondents-Appellees,	Supreme Court Case No. **CVA97-047** Superior Court Case No. **SP0155-97**
JOHN JOSEPH GOGUE, Petitioner-Appellant, vs. **EDUARDO C. BITANGA, Director of Department of Corrections.** Respondent-Appellee.	Supreme Court Case No. **CVA97-050** Superior Court Case No. **SP077-95** **OPINION**

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Appeal from the Superior Court of Guam

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Hagåtña, Guam

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PETER C. SIGUENZA, Chief Justice; JOSE I. LEON GUERRERO, Associate Justice; ROBERT J. TORRES, Justice Pro Tempore.

SIGUENZA, C.J.:

[1] Petitioners-Appellants Sidney Dulei Borja, Michael C. Laguana, and John Joseph Gogue (collectively "Petitioners") each appealed the Superior Court of Guam's denial of Petitioners' respective petitions for Writs of Habeas Corpus. Petitioners' joined in a motion to consolidate their respective appeals, the Government stipulated to the consolidation and on December 31, 1997 the motions to consolidate were granted.

[2] This court lacks jurisdiction to consider the Petitioners' appeals from the denial of their petitions for Writs of Habeas Corpus under the court's appellate jurisdiction but elects to treat the Petitioners' appeal as original petitions for Writs of Habeas Corpus. Based upon a review of the record and the following considerations, the petitions for Writs of Habeas Corpus are denied.

I. BACKGROUND

[3] Petitioners were each indicted on May 6, 1993 by the Territorial Grand Jury in criminal case CF0113-93 on six counts of robbery as a second degree felony and one count of kidnapping as a first degree felony with special allegations that Petitioners unlawfully used a deadly weapon during the commission of one of the robberies and during the kidnapping. Petitioner Borja was also indicted in criminal case CF0116-93 for the crimes of burglary, and robbery with a special allegation that Borja used a deadly weapon in the commission of these crimes. Borja was also indicted for possession of a firearm without an identification card.

[4] On July 29, 1993 Petitioner Borja entered into a plea agreement whereby he pled guilty to second degree robbery, and second degree kidnapping in criminal case CF0113-93, guilty to second degree robbery in criminal case CF0116-93, and guilty to third degree robbery contained in an information in criminal case CF0209-93. Petitioner Borja was sentenced to 30 years incarceration at the Department of Corrections with credit for time served.

[5] On August 4, 1993 Petitioner Gogue pled guilty to second degree robbery and second degree kidnapping in criminal case CF0113-93, and guilty to third degree robbery in criminal case CF0215-93. The court sentenced Petitioner Gogue to 22 years incarceration with credit for time served.

[6] Petitioner Laguana pled guilty to second degree robbery and second degree kidnapping in criminal case CF0113-93. Laguana further pled guilty to seven counts of third degree robbery contained in an information in criminal case CF0253-93. He was given a 30 year sentence at the Department of Corrections with credit for time served.

[7] Subsequently, each petitioner filed a *pro se* petition for a Writ of Habeas Corpus in the Superior Court of Guam and all were appointed counsel. After briefing by the parties, the Superior Court, in separately filed decisions in each case[1], concluded that the Petitioners' had not been accorded their right to be considered for sentencing under 9 GCA Chapter 83 Guam's Youth Correction Act (the "Act") and granted the Writs of Habeas Corpus. The Superior Court indicated that the Act had not been repealed and was an exception to the minimum mandatory sentencing laws. While recognizing the Act had never been implemented, the Superior Court agreed that the petitioners qualified under the Act and concluded the Superior Court was bound by the provisions of the Act. In the case of both Borja and Gogue, the court ordered Respondent Bitanga to provide additional information and report on the benefits, if any, petitioners could gain from treatment under the Act.

[8] After issuing its orders, the Superior Court subsequently vacated each of its prior orders and withdrew issuance of the writs as to all petitioners. The court stated each petitioner had received the benefit of the respective plea agreements. In addition, the trial court stated that a Supreme Court policy determination required reversal and vacation of its prior orders.

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[1]A Decision and Order does not appear to have been filed in Laguana's case. However, a judgment was filed indicating a Decision and Order was previously filed and the writ granted. The judgment likewise withdrew issuance of the writ.

II. ANALYSIS

[9] We must first decide whether this court has jurisdiction to hear an appeal denying writ relief in a habeas matter. The jurisdictional boundaries of the Supreme Court of Guam are set forth as follows:

> (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 appellate jurisdiction over attorney disciplinary matters.

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

[10] The court, therefore, has the power to hear the appeal of any justiciable controversy or proceeding, regardless of subject matter or amount. The court may also hear appeals arising from a judgment or final order of the Superior Court. In the matter currently before the court, judgments were entered and the Petitioners appeal these judgments.

[11] While the broad language of section 3107 appears to give this court jurisdiction to hear an appeal of an order denying habeas relief, the specific language of the statute reveals a distinction is drawn between the court's appellate and original jurisdiction. Section 3107 provides the Supreme Court of Guam with original jurisdiction over matters generally characterized as writ proceedings, including mandamus, prohibition and injunction. While a habeas corpus proceeding is not specifically enumerated, the "similar" remedies language of section 3107 provides this court with the basis to hear habeas proceedings using its original jurisdiction.

[12] This distinction between the court's appellate and original jurisdiction may be further ascertained from the Guam Legislature's adoption of Chapter 135 of Title 8 of the Guam Code Annotated which specifically permits the appeal to the Supreme Court by the Attorney General from a final order of the Superior Court of Guam made upon the return of a writ of habeas corpus. 8 GCA

§ 135.74 (1993).[2] This appeal may be taken only when a writ is granted discharging a defendant after conviction. *Id.* Noticeably absent from the statute's language is authority permitting an unsuccessful petitioner from utilizing the same review process. Accordingly, we hold that Petitioners do not have the right to appeal the denial of their petitions for habeas corpus, the right to appeal being granted by statute only to the government. *See People v. Taimanglo*, 1991 WL 257358, Civil Case No. CV91-0017A (D. Guam App. Div. November 18, 1991)(holding petitioner had no right to appeal an adverse decision and requiring the submission of a new writ of habeas corpus).

[13] Since there is no right to appeal a denial of a writ of habeas corpus, a petitioner must file a new petition with this court after exhausting his remedies at the trial court level. Procedurally, the Supreme Court then may either: (i) issue a new writ and direct an answer or, (ii) deny the petition outright. If the matter should be heard on the merits, our assessment, consistent with this body's appellate nature, will be conducted in a manner similar to other writ matters that have come before us. Thus, the court will act as a reviewing body relying upon the evidentiary record generated by the lower court.

[14] The Petitioners did not file a new petition for a writ of habeas corpus with this court. However, we have the ability to elect to treat their appeals as original petitions for writs of habeas corpus filed with the court. *See People v. Ojeda*, 186 Cal. App.3d 302, 230 Cal. Rptr. 609 (1986). The right to appeal is limited and not available to a defendant denied habeas relief. *Id.* at 304, 230 Cal. Rptr. at 610. Moreover, an appeal of this nature must be dismissed unless a court elects to treat the defendant's appeal as a new petition for habeas corpus. *Id.* at 304-305, 230 Cal.Rptr. 610. The

[2]The statute reads as follows:

> An appeal may be taken to the Guam Supreme Court by the Attorney General from a final order of the Superior Court made upon the return of a writ of habeas corpus discharging a defendant after his conviction, in all criminal cases prosecuted in a court of record. If an appeal is taken, the defendant shall not be discharged from custody pending a final decision upon the appeal and he shall be retaken into custody if he has been discharged, provided, however, that the Guam Supreme Court may order his release pursuant to Chapter 40 (commencing with § 40.10).

Ojeda court elected not to treat the appeal as a habeas petition and remanded the matter to the trial court. *Id.* The filing of a future habeas petition was not, however, foreclosed to the defendant. *Id.*

[15] Using our discretion, we elect to treat Petitioners' appeals as original petitions for writs of habeas corpus. Likewise, we treat the government's brief as the appropriate response to such petition. We will now address the merits of the petitions.

[16] Petitioners argue they have a right to be sentenced pursuant to the Act. Petitioners essentially contend they should be considered under the Act although rules necessary to carry out the intent of the Act and to enable the Territorial Parole Board to exercise powers and duties under the Act were never adopted. *See* 9 GCA § 83.30 (1994). Additionally, no Director of the Department of Corrections has ever certified that proper and adequate treatment, facilities and personnel have been provided under the Act. 9 GCA § 83.45 (1994). Petitioners ask for relief although there are District Court Appellate Division decisions holding to the contrary. *See People v. Chargualaf*, 1989 WL 265040, Crim No. 88-00068A (D. Guam App. Div. September 26, 1989) *aff 'd after remand* 1990 WL 320350, Crim No. 88-00068A (D. Guam App. Div. October 18, 1990); *People v. Ibanez*, 1990 WL 320354, Crim. No. CR90-00062A (D. Guam App. Div. June 23, 1990)(relying upon *People v. Chargualaf*). Petitioners argue that the *Chargualaf* and *Ibanez* decisions are erroneous and should be explicitly overruled. Although Petitioners admit the *Chargualaf* court was correct in finding the executive branch has failed to implement the Act, they argue the District Court Appellate Division erred in concluding this meant a youthful offender could not be sentenced under the Act.

[17] On previous occasions, we made clear that Appellate Division cases neither control nor bind our interpretation of law. *People v. Quenga*, 1997 Guam 6, ¶ 13, n.4. While "we will not disturb precedent that is 'well supported in law and well reasoned,' we clearly are within our authority to modify those interpretations previously addressed by federal courts." *Sumitomo Construction v. Zhong Ye, Inc.*, 1997 Guam 8, ¶ 6. (citations omitted). When choosing to make such changes, we will use our own independent and reasoned analysis of the issues before us. *Id.*

[18] We believe that *Chargualaf, supra* is well reasoned precedent and we decline Petitioner's

invitation to overrule its holding. In *Chargualaf*, the Appellate Division recognized the Act, although passed into law by the Guam Legislature, was never implemented. The *Chargualaf* court thus found the sentencing of a defendant under the Act to be impossible and, therefore, his appeal had no merit as to this issue.

[19] As in *Chargualaf*, the sentencing of the Petitioners under the Act is impossible. The conditions existing at that time have not changed and the Act has still not been implemented[3]

[20] We also find no merit in Petitioners' argument that trial courts must consider and utilize the sentencing aspects of the Act although the other provisions of the Act are inoperable. We view the Act as legislation that must be looked at in a comprehensive manner and not legislation that can be used in a piecemeal fashion. The United States Supreme Court, in discussing the Federal Youth Corrections Act[4] specifically described said act "as the most comprehensive federal statute concerned with sentencing." *Dorszynski v. United States*, 418 U.S. 424, 432, 94 S.Ct. 3042, 3047 (1974). The federal act was designed to provide a better method for treating young offenders convicted in federal courts in that vulnerable age bracket, to rehabilitate them and restore normal behavior patterns. *Id.* at 433, 94 S.Ct. at 3048. Federal judges were thus given two new alternative sentencing options providing either a system of treatment for the rehabilitation of qualified offenders, or probation. *Id.*

[21] Like the federal act, Guam's Act was designed to provide rehabilitative treatment consisting of corrective and preventive guidance as well as training to youthful offenders. 9 GCA § 83.15(f)(1994). The legislation is a comprehensive scheme to permit trial courts, when sentencing youthful offenders, to consider the benefits of treatment programs established under the Act. However, unlike the federal act, the rehabilitation goals of the Act cannot be accomplished at this time because the Act has never been implemented. Sentencing under the Act is an impossibility. Consequently, the sentencing judge is not required to utilize the Act when treatment programs are nonexistent and the judge, in determining an appropriate sentence, is unable to properly consider the

[3]Interestingly, Petitioners have not sought a Writ of Mandamus for implementation of the Act.
[4]Guam's Youth Correction Act was modeled after the Federal Youth Corrections Act.

benefits of any treatment programs.

III. CONCLUSION

[22] Accordingly, the court hereby **DENIES** the petitions for Writs of Habeas Corpus.

JOSE I. LEON GUERRERO
Associate Justice

ROBERT J. TORRES, JR.
Associate Justice

PETER C. SIGUENZA
Chief Justice