IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Petitioner,

vs.

SUPERIOR COURT OF GUAM,
Respondent,

FRANCISCO H. CHIGUINA, JR.,
Real Party In Interest.

Supreme Court Case No.: WRM02-005
Superior Court Case No.: CF0407-94

OPINION

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Petition for Alternative Writ of Mandate
filed September 23, 2002

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; JANET HEALY WEEKS and RICHARD H. BENSON, Justices *Pro Tempore*.

CARBULLIDO, C.J.:

[1] Petitioner, the People of Guam (hereinafter "People"), filed a Petition for an Alternative Writ of Mandate on September 23, 2002, requesting that this court direct the Respondent, the Superior Court of Guam, (hereinafter "Respondent"), to vacate its sentencing order and to sentence Real Party in Interest Francisco H. Chiguina, Jr. (hereinafter "Chiguina") in accordance with the plea agreement previously accepted by the trial court. We find that the trial court had the discretion to deviate from the terms of the plea agreement and deny the People's Petition for an Alternative Writ of Mandate.

I.

[2] Chiguina was one of five defendants involved in a wide-ranging burglary conspiracy, which resulted in a combined loss of about $75,000 to various residences and businesses on Guam. On November 23, 1994, Chiguina was indicted on five counts of burglary (as a second degree felony), four counts of theft (as a second degree felony), and three counts of theft (as a third degree felony). On January 17, 1995, Chiguina and the People executed a plea agreement.

[3] In the plea agreement, Chiguina agreed to enter a plea of guilty to five counts of burglary and to two counts of theft. In addition to waiving his right to move for a reduction of a sentence within one hundred twenty days of sentencing, his right to appeal his convictions, and his right to immediate sentencing, Chiguina also agreed to: (1) fully and immediately cooperate with the People's investigation, (2) testify against his co-conspirators, and, (3) submit to a polygraph test. In consideration for Chiguina's plea and cooperation, the People agreed to dismiss two counts of theft (as a second degree felony) and three counts of theft (as a third degree felony). More

importantly, the People and Chiguina also agreed that Chiguina's sentence would be reduced to the following:

> A. That as to the five counts of Burglary (As a Second Degree Felony), [Chiguina] shall serve three (3) years imprisonment at the Department of Corrections;
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> B. That as to the two counts of Theft (as a Second Degree Felony), [Chiguina] shall serve five (5) years imprisonment at the Department of Corrections, suspended, consecutive to the sentence imposed in the previous paragraph with probation to be imposed for a period of five (5) years; said probationary period to commence upon [Chiguina's] release from the Department of Correction; and
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> C. That as to all charges, to leave imposition of any fines or community services to the discretion of the Court.

People's Petition for Alternative Writ of Mandate, p. 26. On December 7, 1995, pursuant to the plea agreement, Chiguina entered a plea of guilty to five counts of burglary (as a second degree felony) and to two counts of theft (as a second degree felony). The trial court accepted both Chiguina's plea and the plea agreement.[1] However, Chiguina's sentencing date was not scheduled "until such date that the People either moved for sentencing or certified that cases against [Chiguina's] co-actors had reached disposition." People's Petition for Alternative Writ of Mandate, pp. 5-6.[2]

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[1] The trial court's acceptance of the plea and plea agreement is evidenced by the following order:

> After a hearing held on 12-7-95, 1995, and a finding that Defendant's plea of guilty to five counts of BURGLARY (As a Second Degree Felony); and two counts of THEFT (As a Second Degree Felony) is knowingly and voluntarily made, *this Court now accepts the plea agreement herein* and his plea of guilty and adjudges Defendant guilty of five counts of BURGLARY (As a Second Degree Felony) and two counts of THEFT (As a Second Degree Felony). Sentencing shall take place on the ____day of _____, 1995.

People's Petition for Alternative Writ of Mandate, p. 30 (emphasis added).

[2] Apparently, "Chiguina himself asked for his sentencing to be delayed and his request was granted." People's Reply to Chiguina's Answer, p. 2.

[4] On February 3, 2000, the court received the People's motion to set aside the sentencing date. The motion was not filed by the court until February 23, 2000. Although the trial court ordered that sentencing would take place on April 28, 2000, sentencing did not occur until May 28, 2002, as a result of five delays apparently attributed to both of the parties and the court. Additionally, the trial court judge who signed the 1995 Plea Agreement was appointed Associate Justice of the Supreme Court of Guam and the case was assigned to a new trial court judge. During sentencing, the new trial court judge sentenced Chiguina to three years imprisonment, with all but six months to be suspended. Chiguina was ordered to serve the six months imprisonment during weekends and to pay restitution to the victims. On June 5, 2002, the People filed a Motion to Vacate Sentence or Stay Sentence. On September 20, 2002, the trial court ordered that the sentence would be stayed pending the People's Petition to this court.

[5] On September 23, 2002, the People filed a Petition for an Alternative Writ of Mandate, requesting that this court order the Respondent to vacate its sentencing order and instead sentence Chiguina to the terms specified in the plea agreement accepted by the original trial court judge on December 7, 1995.

II.

[6] This court has jurisdiction to review and grant a petition for an alternative writ of mandate pursuant to Title 7 GCA §3107(b) (1994). Title 7 GCA §31203 provides that "[t]he writ must be issued in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course

of law." Title 7 GCA §31203 (1993). The provision, Title 8 GCA §130.20[3], which enumerates the types of appeal that the government may file in a criminal case, does not delineate the issue of whether the trial court during sentencing can deviate from the terms of the plea agreement as an appealable issue. *See also People v. Superior Court (Gifford),* 62 Cal. Rptr. 2d 220 (Ct. App. 1997) (granting the People's peremptory writ of mandate petition, which directed the respondent court to vacate its order of a sentence that deviated from the terms of a negotiated plea). Consequently, because the People have no "plain, speedy, and adequate remedy in the ordinary course of law," we find the issue presented before this court proper for *mandamus* review.[4] 7 GCA §31203.

III.

[7] In this Petition for an Alternative Writ of Mandate, we are called to determine whether the trial court retained jurisdiction to deviate from the plea agreement's sentencing terms after having accepted both the plea agreement and the defendant's guilty plea pursuant to the agreement.

[3] Title 8 GCA §130.20. Appeals Allowed by Government.

(a) An appeal may be taken by the government from any of the following:
(1) An order granting a new trial.
(2) An order arresting judgment.
(3) An order made after judgment, affecting the substantial rights of the government.
(4) An order modifying the verdict on finding by reducing the degree of the offense or the punishment imposed.
(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.
(6) An order granting a motion to suppress evidence. . . .

Title 8 GCA §130.20 (1993).

[4] Chiguina does not challenge this court's jurisdiction in this case or present any arguments to oppose *mandamus* review.

[8] We begin our analysis by outlining the interplay between the principle of a plea agreement as a contract, the trial court's broad sentencing discretion, and the statutes governing the court's role in plea agreements. "The imposition of sentence and exercise of discretion are fundamentally and inherently judicial functions." *Gifford*, 62 Cal. Rptr. 2d 220 at 222 (quoting *People v. Ames*, 261 Cal. Rptr. 911, 913 (Ct. App. 1989)). In addition to caselaw, this principle is reflected in the local statutory provisions cited in Chiguina's brief, which describe the trial court's broad discretion in determining a defendant's sentence. *See* Title 9 GCA §§80.10(a), 80.60(a), 80.22 (1996), and Title 8 GCA §60.80(c) (1993). However, under a majority of jurisdictions, including those who follow the Federal Rules of Criminal Procedure, the trial court's broad sentencing discretion is constricted when the court accepts the *plea* or the *plea agreement*. "Once the court *accepts a plea* induced by an agreement, the terms of the agreement must be abided by," *People v. Arriaga*, 501 N.W.2d 200, 201 (Mich. Ct. App. 1993) (emphasis added) (citation omitted), and "[i]f the court accepts the *plea agreement*, it must proceed pursuant to the agreement." *State v. Rutherford*, 744 P.2d 13, 14-15 (Ariz. Ct. App. 1987) (emphasis added). Thus, the court's acceptance of the plea agreement or plea effectively binds the court to the agreement, and precludes the court from "chang[ing] the terms of the agreement between the government and the defendant." *Mejia v. Irwin*, 987 P.2d 756, 758 (Ariz. Ct. App. 1999); *see also Ames*, 261 Cal. Rptr. at 913.

[9] On Guam, however, the trial court's sentencing discretion is not similarly constricted by an acceptance of the plea agreement or the plea. Title 8 GCA §60.80, entitled Plea Bargaining Regulated, sets forth the trial court's role in the plea bargaining process. Section 60.80 provides in relevant part:

> (a) The attorney for the government and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere

> to a charged offense or to a lesser or related offense, the attorney for the government will move for dismissal of other charges, or will recommend or not oppose the imposition of a particular sentence, or will do both. The court shall not participate in any such discussions.
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> (b) If a plea agreement has been reached by the parties which contemplates entry of a plea of guilty or nolo contendere in the expectation that a specified sentence will be imposed or that other charges before the court will be dismissed, the court shall require the disclosure of the agreement in open court *at the time the plea is offered*. Thereupon the court may accept or reject the agreement, or may defer its decision as to acceptance or rejection until there has been an opportunity to consider the presentence report.
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> (c) If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement or another disposition more favorable to the defendant than that provided for in the plea agreement.
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> (d) *If the court rejects the plea agreement*, the court shall inform the parties of this fact, advise the defendant personally in open court that the court is not bound by the plea agreement, *afford the defendant the opportunity to then withdraw his plea*, and advise the defendant that if he persists in his guilty plea or plea of nolo contendere the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

Title 8 GCA §60.80(a)-(d) (1993) (emphasis added). In accordance with section 60.80(b), when a plea agreement has been reached by the government and the defendant, the trial court has the discretion to undertake one of the following actions: (1) accept the agreement; (b) reject the agreement; or (3) defer its decision to accept or reject until it considers the presentence report. If the trial court chooses to accept the plea agreement, section 60.80(c) is triggered and has two important aspects.

[10] The first aspect of section 60.80(c) is that it expressly mandates the court to "inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement *or another disposition more favorable to the defendant than that provided for in the plea agreement*." Title 8 GCA §60.80(c) (1993) (emphasis added). Although not clearly spelled out in the notes or commentary of the Guam Code Annotated, the mandatory requirement under section 60.80(c) apparently "serves the purpose of informing the defendant immediately that the agreement

will be implemented." FED. R. CRIM P. 11 advisory committee's note to 1974 amendments to 11(e)(3); *See* Missouri Rules of Criminal Procedure § 24.02 (d)(3) and notes[5]; North Dakota Rules of Criminal Procedure § 11(d)(3) and notes.[6]

[11] The second, and perhaps most dispositive, aspect of section 60.80(c) is that it allows the trial court to deviate from the terms of the plea agreement even if the trial court has already accepted the terms of the plea agreement. This is so because the provision explicitly provides the court with the discretion to "embody in the judgment and sentence the disposition provided for in the plea agreement *or another disposition more favorable to the defendant than that provided for in the plea agreement*." 8 GCA §60.80(c) (emphasis added). In light of the inclusion of the italicized clause "or another disposition more favorable to the defendant than that provided for in the plea agreement," section 60.80(c) deviates from the parallel provision of the Federal Rules of Criminal Procedure. The Federal version provides in relevant part:

[5] The Missouri Rules of Criminal Procedure § 24.02 (d)(3), entitled "Acceptance of a Plea Agreement," provides, "If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement." Missouri Rules of Criminal Procedure § 24.02 (d)(3).

The notes following the rule provides that "[s]ubdivision (d)(3) makes is mandatory, if the court decides to accept the plea agreement, that it inform the defendant that it will embody in the judgment and sentence the disposition provided in the plea agreement, or one more favorable to the defendant. This serves the purpose of informing the defendant immediately that the agreement will be implemented." Missouri Rules of Criminal Procedure § 24.02 explanatory note.

[6] The N.D.R.Crim.P. 11(d)(3) entitled, "Acceptance of Plea," provides, "If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement or another disposition more favorable to the defendant than that provided for in the plea agreement." N.D.R.Crim.P. 11(d)(3).

The explanatory note following the rule provides, "[s]ubdivision (d)(3) requires the court, if it accepts the plea agreement, to inform the defendant that it will embody in the judgment and sentence the disposition provided in the plea agreement, or one more favorable to the defendant. This provision serves the dual purpose of informing the defendant immediately that the agreement will be implemented." N.D.R.Crim.P. 11(d) explanatory note.

> (3) *Acceptance of a Plea Agreement*. If the court accepts the plea agreement, *the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement*.

FED. R. CRIM P. 11(e)(3) (emphasis added)[7]; *see United States v. Semler*, 883 F.2d 832, 833 (9th Cir. 1989) (noting that "Rule 11(e)(3) prohibits a district court from sentencing a defendant to a sentence less severe than that provided for in the plea agreement accepted by the court"). Although section 60.80 was based on the Federal Rules of Criminal Procedure, the local rules' deviation from the Federal version stems from Congress' specific deletion of the "or another disposition more favorable to the defendant than that provided for in the plea agreement" clause. *See* 8 GCA §60.80 Notes ("Section 60.80 is new. It is based on *proposed* Rules 11(e) of the Federal Rules of Criminal Procedure and Standards 1.5, 2.2, 3.3 and 3.4 set forth in ABA, Project on Minimum Standards for Criminal Justice Pleas of Guilty (Approved draft 1968) (emphasis added). *See* generally 8 Moore, Federal Practice 11.05 (1974)). In *United States v. Semler*, 883 F.2d 832 (9th Cir. 1989), the ninth circuit explained why the Federal version does not contain the "or more favorable . . ." clause:

> It is true that the Advisory Committee's Notes state that '[s]ubdivision (e)(3) makes it mandatory, if the court decides to accept the plea agreement, that it inform the defendant that it will embody in the judgment and sentence the disposition provided in the plea agreement, *or one more favorable to the defendant*.' The actual text of 11(e)(3), however, states only that the district court must inform the defendant that it will embody in the sentence the disposition provided in the plea agreement.
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> The legislative history of 11(e)(3) shows that Congress wished to preclude a district court from accepting a plea agreement which provides for a specific sentence and then imposing a more lenient sentence than that provided for in the plea agreement.

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[7] The Federal version was recently amended in 2001 and now reads:

> 11(c)(4) **Accepting a Plea Agreement**. If the court accepts the plea agreement, it must inform the defendant that to the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the agreed disposition will be included in the judgment.

Federal Rules of Criminal Procedure 11(c)(4) (2003). However, the latest revision is not dispositive in this case.

> The version of 11(e)(3) proposed by the Supreme Court in 1974 stated that 'the court shall inform the defendant that it will embody in the ... sentence the disposition provided for in the plea agreement or another disposition more favorable to the defendant than that provided for in the plea agreement.' The House Judiciary Committee then deleted the language 'or another disposition more favorable to the defendant than that provided for in the plea agreement,' and the House affirmed the committee's action by rejecting on the floor an amendment offered to restore the Supreme Court's version of the rule. The Senate accepted the House's version of the rule. By deleting the Supreme Court's 'more favorable to the defendant' language, Congress evidenced its intent to require a district court to sentence a defendant in accordance with the plea agreement.

Semler, 883 F.2d at 833-34 (citations omitted) (emphasis added) (alteration and omissions in original). The explanation provided for in *Semler* regarding why Congress deleted the clause is consistent with the Connecticut Practice Series, which analyzes Connecticut's plea agreement statute. Connecticut's plea agreement rule is similar to the Guam version and provides:

> If the judicial authority accepts the plea agreement, it shall embody in the judgment and the sentence the disposition provided for in the plea agreement *or another disposition more favorable to the defendant than that provided for in the plea agreement*.

Conn. R. Crim. P. 39-8 (emphasis added). The Connecticut Practice Series provides the following explanation for Connecticut's deviation from the Federal provision:

> This provision is adopted from the Federal Rules of Criminal Procedure, Rule 11(e)(3) as promulgated by the United States Supreme Court in 1975, which provided:
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> > If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement or another disposition more favorable to the defendant than that provided for in the plea agreement. *Note that Federal Rule11(e)(3) was subsequently amended by Congress to delete the language concerning more favorable dispositions*. Rule11(e)(3) as amended by Congress in 1976 provides: If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

D. Borden & L. Orland, 4 Connecticut Practice Series: Criminal Procedure § 39-8 (3d Ed. 2001)

(emphasis added). More importantly, the comments to the Connecticut Practice Series also emphasizes that:

> This key provision relates the plea agreement to sentencing. If the court accepts the plea agreement, it is required to impose the agreed upon sentence *or* another disposition *more favorable* to the defendant than that contemplated in the plea agreement.

Id. Accordingly, based on the plain language of section 60.80(c) and the historical context of rule 11(e)(3) of the Federal Rules of Criminal Procedure, which specifically deleted the "more favorable" language, on Guam, the trial court's sentencing discretion is not constricted by the acceptance of the plea agreement.[8] The trial court can either sentence the defendant in accordance with the terms of the plea agreement or to a disposition more favorable to the defendant.

[12] In the case at bar, the People and Chiguina executed a plea agreement on January 17, 1995. Pursuant to the plea agreement, on December 7, 1995, Chiguina entered into a plea of guilty to five counts of burglary (as a second degree felony) and two counts of theft (as a second degree felony). As evidenced by the signed order of December 12, 1995, the original trial court judge simultaneously accepted both the terms of the plea agreement and Chiguina's plea of guilty. However, due to the plea agreement's terms and the delay caused by the parties and the court, sentencing did not occur until May 28, 2002 by another trial court judge. When the trial court finally sentenced Chiguina, the sentence did not comport with the terms of the plea agreement. The sentence was more favorable to Chiguina than that provided for in the plea agreement. In its Petition for an Alternative Writ of Mandate, the People request that this court direct the lower court

[8] Section 60.80(d) provides that "If the court rejects the plea agreement, the court shall inform the parties of this fact, advise the defendant personally in open court that the court is not bound by the plea agreement, *afford the defendant the opportunity to then withdraw his plea*, and advise the defendant that if he persists in his guilty plea or plea of nolo contendere the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement." Title 8 GCA §60.80(d) (1993). It follows, therefore, that at the time of the trial court's acceptance or rejection of the plea agreement, the defendant had already entered his plea.

to implement the terms of the plea agreement.[9] However, based on our analysis above, the trial court judge during sentencing was not confined to the terms of the plea agreement. In accordance with section 60.80(c), the trial court had the discretion to sentence Chiguina to a disposition more favorable than that provided for in the plea agreement.[10] *See also State v. Warren*, 558 A.2d 1312, 1320-21 (N.J. 1989) (citations and internal quotations omitted) (noting that "we cannot overstress the significance of the judicial responsibility in imposing sentence. Pronouncement of judgment of sentence is among the most solemn and serious responsibilities of a trial court. . . . A court's neutrality can be threatened if a prosecutor . . . were allowed to impinge in this way on the court's independent discretion."); *People v. Farrar*, 419 N.E.2d 864, 962 (N.Y. 1981) (expressing that "[w]hile the court legitimately may indicate that a proposed sentence is fair and acceptable, the necessary exercise of discretion cannot be fixed immutably at the time of the plea, for the decision requires information that may be unavailable then"). In view of our analysis, the People's Petition has, therefore, failed to prove that the trial court erred in exercising its discretion in rendering

[9] We note that in the present case, the issue raised by the People is whether the trial court has the discretion to deviate from the terms of the plea agreement, and, not whether the trial court clearly erred by imposing a very lenient sentence.

[10] The People argue that the trial court erred when it deviated from the sentencing terms of the plea agreement, which was agreed upon by both parties and was previously accepted by the trial court. The People assert that Chiguina had accepted the benefit of the plea agreement, and reneged on the agreement when it came to his sentencing. The crux of the People's argument is premised on the principle that a plea agreement is a contract and the breach thereof, is subject to contract analysis. Our decision does not negate, and in fact, upholds the contractual aspects of a plea agreement. In drafting and offering the Plea Agreement to Chiguina, the People recognized and expressly bound themselves to section 60.80 and its interpretation as evidenced by the first sentence of the Plea Agreement, which cites the section as the authority for the Plea Agreement:

> *Pursuant to Criminal Procedure Code § 60.80*, the Defendant FRANCISCO H. CHIGUINA, JR., represented by Attorney JEFFREY A. COOK, and the People of the Territory of Guam, represented by the Attorney General through RAWLEN M.T. MANTANONA, enter into the following plea agreement:

People's Petition for Alternative Writ of Mandate, p. 22 (emphasis added).

Chiguina's sentence. Accordingly, we hold that the trial court's deviation from the terms of the plea agreement was proper.

IV.

[13] The court, after carefully reviewing the submitted documents and briefs, hereby **DENIES** the Petition for an Alternative Writ of Mandate.