IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM
Plaintiff-Appellee,

vs.

EDWIN V. ALISASIS
Defendant-Appellant.

Supreme Court Case No.: CRA03-006
Superior Court Case No.: CF0302-95

OPINION

Filed: July 25, 2006

Cite as: 2006 Guam 9

Appeal from the Superior Court of Guam
Argued and submitted on October 20, 2003
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, JR. Associate Justice;[1] RICHARD H. BENSON, Justice *Pro Tempore.*

CARBULLIDO, C.J.:

[1] This appeal arises from a criminal case prosecuted by Plaintiff-Appellee People of Guam ("People") against Defendant-Appellant Edwin V. Alisasis ("Alisasis") in the Superior Court of Guam. On February 1, 1996, pursuant to a plea agreement, the trial court accepted Alisasis' pleas of guilty to theft and forgery, both as second degree felonies. On April 12, 1996, the trial court orally imposed Alisasis' original sentence pursuant to the terms of the plea agreement. A judgment was entered thereafter. On June 12, 1997, the trial court granted a joint motion to correct a mistake in the original judgment. An amended judgment was entered, superceding the original judgment.[2]

[2] Alisasis appeals from the trial court's holding that his amended sentence includes two consecutive five-year periods of felony probation, that such a sentence is legal in Guam, that his probation was scheduled to last until 2006 and that the trial court therefore possessed jurisdiction over his case on June 28, 2002.

[3] We find that the trial court did not possess the authority under 8 GCA § 120.50 to change Alisasis' original judgment as it did. We therefore vacate the amended judgment and reinstate the original judgment. We further find that the issues raised on appeal are moot as they relate solely to

[1] Justice *Pro Tempore* Benjamin J.F. Cruz was originally appointed to this panel. However, he became ineligible to continue pursuant to Title 7 GCA §§ 6108(a) and 6104. Thereafter Justice *Pro Tempore* Peter C. Siguenza was appointed to this panel but became ineligible pursuant to 7 GCA §§ 6108(a) and 6104. Thereafter, pursuant to 7 GCA § 6115 (as amended by P.L. 27-31), by Order of Chief Justice F. Philip Carbullido, Associate Justice Robert J. Torres was appointed to sit as a member of this panel until disposition of this case. Justice Torres has reviewed all matters relevant to this case, including reading all briefs and listening to recordings of all court proceedings which took place prior to his appointment to this panel.

[2] Unless specifically articulated otherwise, this opinion refers to the sentence orally imposed on April 12, 1996, and the resulting judgment as the "original sentence" and "original judgment" and the sentence contained in the June 12, 1997 amended judgment as the "amended sentence."

the amended judgment and its amended sentence. This matter is therefore remanded to the trial court for further proceedings consistent with this opinion.

[4] On July 19, 1995, Alisasis was indicted in the Superior Court of Guam and charged with several criminal offenses including one count of Theft as a Second Degree Felony and one count of Forgery as a Second Degree Felony.

[5] On February 1, 1996, pursuant to a written plea agreement, Alisasis pled guilty to theft and forgery as second degree felonies. On April 12, 1996, with Alisasis present, the original sentence was orally imposed by the trial court. Alisasis' original judgment was executed and entered soon thereafter articulating Alisasis' original sentence.

[6] On June 12, 1997, fourteen months after the April 12, 1996 oral imposition of Alisasis' original sentence, counsel for both Alisasis and the People appeared before the trial court pursuant to a one-page joint motion "in accordance with Title 8 G.C.A. § 120.50" which was filed that same day.[3] The trial court granted the motion and the amended judgment was entered, superseding the original judgment. Alisasis was released from confinement and placed on probation pursuant to his amended sentence.[4]

[7] On June 7, 2002, Alisasis failed to appear at a hearing scheduled before the trial court regarding a probation violation report filed by the adult probation office. An arrest warrant was issued by the trial court. The arrest warrant was returned at a hearing on June 28, 2002. The trial court was informed that Alisasis' probation was scheduled to expire on June 12, 2002, and thus

[3] Section 120.50 of Title 8 is entitled, "Clerical Errors; May be Corrected Any Time." The one-page June 12, 1997 joint motion consisted of one paragraph. Record on Appeal, Tab 441, Ex. 3. The joint motion appears as an Exhibit to the People's August 19, 2002 Opposition to Defendant's Motion to Vacate Probation Extension which was designated as part of the record on appeal. No other documents regarding the joint motion appear in any part of the record on appeal.

[4] It appears from the record provided on appeal that Alisasis was released from custody soon following the June 12, 1997 hearing, although his exact release date is not clear. Transcript ("Tr.") (Return of Warrant Hearing, June 28, 2002) (when asked by the trial court when he was released from custody Alisasis responded, "1997, sir. June.")

would automatically expire if the trial court were to vacate the arrest warrant without first extending Alisasis' probationary period.[5] The trial court ordered that Alisasis' felony probation be extended until 2004, a period of two years, and vacated the arrest warrant.

[8] On July 11, 2002, Alisasis filed a motion to vacate the trial court's June 28, 2002 order extending his probation arguing that Guam law did not authorize an extension of probation in his case. The People filed a pleading identified as an opposition to the motion, although it did not oppose vacating the two-year probation extension. Instead, the People submitted that the two-year probation extension was premature and unnecessary. In support of its position the People explained that the trial court had been erroneously informed that Alisasis' probation was scheduled to expire on June 12, 2002. Rather, they suggested, Alisasis' amended sentence included two consecutive five-year periods of felony probation which would not expire until 2006. On February 27, 2003, the trial court issued its Decision and Order denying Alisasis' motion to vacate the probation extension, essentially agreeing with the People's position. The Court held that Alisasis' amended sentence consisted of two consecutive five-year periods of felony probation, that such a sentence is legal on Guam and that his probation is therefore not scheduled to expire until 2006. Alisasis timely appealed.

II.

[9] We have jurisdiction over this appeal from the trial court's denial of Alisasis' motion to vacate the order extending probation. 7 GCA § 3107(b) (2005).

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[5] Guam law regarding the expiration of a probationary term and its impact on the court's jurisdiction was amended by Section 15 of Public Law 24-239 to allow for the tolling of probation while an arrest warrant is pending regarding a probationer's possible violation of probation conditions. Guam Pub. L. 24-239:15 (Aug. 14, 1998) (amending 9 GCA § 80.66(a)). The amendment appears to have been in response to two separate Opinions from this court issued on July 6, 1998 holding that, pursuant to then-current Guam law, upon expiration of a probationer's probationary period the trial court lost jurisdiction to proceed on a probation violation regardless of the circumstances. *See People v. Angoco*, 1998 Guam 10 ¶ 5 (stating that "[t]he statutes do not provide for any extension of time or for any tolling of the probationary period which would allow the court to retain jurisdiction past the probationary period.") (footnote omitted); *People v. Anson*, 1998 Guam 11 ¶¶ 7-10, 15.

III.

[10] Issues of statutory interpretation are reviewed *de novo*. *People v. Gutierrez*, 2005 Guam 19 ¶ 13 (citing *Ada v. Guam Tel. Auth.*, 1999 Guam 10 ¶ 10).

IV.

[11] Although Alisasis appeals from the denial of his motion to vacate the order extending probation, we review whether 8 GCA § 120.50 authorized the trial court to amend the original judgment. *See United States v. Bennett*, 423 F.3d 271, 274 (3rd Cir. 2005) (stating that "[t]he legal question of whether the [trial court] had the authority to amend its sentence is subject to plenary review.") (citation omitted).

A. The Joint Motion to Amend the Original Judgment in Accordance with Title 8 GCA § 120.50 and the Limited Scope of Section 120.50

[12] The amended judgment was entered on June 12, 1997 as a result of a joint motion submitted by Alisasis and the People. The joint motion's caption read, "Motion in Accordance with Title 8 GCA § 120.50," and its entire text consisted of the following:

> The Government of Guam, through Assistant Attorney General, David J. Lillig, and the Defendant, through his attorney, Howard Trapp, esq., jointly move the Court for an Order to correct a mistake in the February 1, 1996 [sic] Judgment arising from an oversight or omission in accordance with 8 G.C.A. § 120.50. Citing: *Taisipic V. Marion, et al, Civil Case #CVA 96-008,* Guam Supreme Court December 13, 1996.

Record on Appeal, Tab 441, Ex. 3 (People's Opp'n to Def.'s Mot. To Vacate Probation Extension). No additional documents supporting the joint motion appear in the record provided on appeal.

[13] Section 120.50 states as follows, in its entirety: "Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any as the court orders." 8 GCA § 120.50 (2005). To determine whether the trial court had the authority to enter the amended judgment on June 12,

1997 pursuant to Section 120.50, we must consider the scope of Section 120.50.[6]

[14] Section 120.50 is identical to Federal Rule of Criminal Procedure 36. *See* Note, 8 GCA § 120.50. Cases interpreting the identical federal rule provide this court with valuable guidance regarding Guam's statute. The Appellate Division of the United States District Court of Guam, in considering an appeal from the Superior Court of Guam prior to the creation of this Supreme Court, recognized this in saying the following:

> Section 120.50 is identical to Rule 36 of the Federal Rules of Criminal Procedure and, thus, cases interpreting Rule 36 are applicable to § 120.50. A thorough examination of the case law reveals that the trial court has the authority under Rule 36 and, hence, under § 120.50, to correct at any time, clerical mistakes in a judgment or clerical errors in the record arising from oversight or omission to reflect the oral imposition of such sentence.

People of the Territory of Guam v. Taisipic, 1986 WL 68914, *3 (D. Guam App. Div., June 12, 1986) (citing *Johnson v. Mabry*, 602 F.2d 167 (8th Cir. 1979); *Kennedy v. Reid*, 249 F.2d 492 (D.C. Cir. 1957); *United States v. Bussey*, 543 F.Supp. 981 (D.C. Va., 1982); *See generally* 3 Charles Alan Wright, Federal Practice & Procedure §§ 611-612, 526 (2d ed. 1982); 8A Moore's Federal Practice §§ 36.01-36.03, 36-1 (2d ed. 1983)). Moreover, the Ninth Circuit Court of Appeals has said that "Rule 36 is a vehicle for correcting *clerical* mistakes but it may not be used to correct judicial errors in sentencing." *United States v. Penna*, 319 F.3d 509, 513 (9th Cir. 2003) (emphasis in original) (citing *United States v. Hovsepian*, 307 F.3d 922, 927 (9th Cir. 2002) ("Rule 35 is generally the only vehicle available for resentencing, unless the case is on remand from the Court of Appeals."); *United States v. Dickie*, 752 F.2d 1398, 1400 (9th Cir. 1985) ("[T]he district court has no discretionary

[6] The joint motion was based solely on Section 120.50. We note that a provision also exists in Guam law stating that an illegal sentence may be corrected at any time and, for a period of 120 days, a sentence may be reduced or corrected if imposed in an illegal manner. 8 GCA § 120.46 (2005). However, the possible applicability of Section120.46 to the matter at hand, that is entry of the amended judgment on June 12, 1997, was never raised before the trial court. Although both parties theorize in their supplemental briefs on the issue of jurisdiction that the trial court may have thought the original sentence was illegal, nothing in the record supports such conjecture. Therefore, we leave consideration of such to the trial court upon remand. Our review is currently limited to whether Section 120.50 provided the trial court with the authority to alter the original sentence as it did.

authority under Rule 36 to correct its own errors in imposing an otherwise valid sentence . . . ."); *United States v. Daddino*, 5 F.3d 262, 264-65 (7th Cir. 1993) (noting that Rule 36 "does not apply to errors made by the court itself."). Further, and directly on point with the case at bar, the Ninth Circuit has also held that "the provisions of Rule 36 do not permit a substantive change in the period of incarceration which the defendant must serve." *United States v. Kaye*, 739 F.2d 488, 490 (9th Cir. 1984). This holding by the *Kaye* Court was quoted favorably by the *Penna* Court in 2003. *Penna*, 319 F.3d at 513. Other federal circuit courts have held similarly regarding Rule 36. *See United States v DeMartino*, 112 F.3d 75, 79 (2d Cir. 1997) ("Rule 36 . . . does not authorize the court to amend the oral sentence itself or to modify the written judgment to effectuate an intention that the court did not express in its oral sentence." (citing *United States v. Werber*, 51 F.3d 342, 343, 347 (2d Cir. 1995)); *United States v. Thomas*, 135 F.3d 873, 875 (2nd Cir. 1998) (quoting *DeMartino*, 112 F.3d at 75); *United States v. DeLeo*, 644 F.2d 300, 301 (3d Cir. 1981) (stating that "Rule 36 applies only to clerical mistakes and errors in the record; it does not authorize substantive alteration of a final judgment."). Further, the Third Circuit Court of Appeals has provided insight regarding Rule 36's mirror rule in the civil context in stating that, "[a]s courts have held in the context of Rule 36's twin, Federal Rule of Civil Procedure 60(a), a clerical error 'must not be one of judgment or even of misidentification, but merely of recitation, of the sort that a clerk or amanuensis might commit, mechanical in nature.'" *United States v. Guevremont*, 829 F.2d 423, 426 (3rd Cir. 1987) (quoting *Dura-Wood Treating Co. v. Century Forest Indus.*, 694 F.2d 112, 114 (5th Cir. 1982)). The *Guevremont* Court went on to say that "this definition of a clerical error is equally applicable in the context of Rule 36." *Id.* (citing 3 Charles Alan Wright, Federal Practice and Procedure § 611 (1982)). As articulated by courts interpreting Rule 36, it is quite clear that Section 120.50 provides a trial court with limited leeway in making changes to judgments already entered.

[15] We now turn to the specific terms of Alisasis' original sentence as pronounced in the original judgment and compare those terms to those of the amended sentence found in the amended judgment to determine whether the changes to the original sentence which were brought about by the amended judgment were consistent with the limitations of Section 120.50.

B. Alisasis' Two Sentences

[16] We begin with consideration of Alisasis' original sentence. We have reviewed the original judgment as well as the transcript of the April 12, 1996 sentencing hearing at which the original sentence was orally imposed. Alisasis was physically present at that hearing. We find that the sentence that appears in the original judgment is identical to the sentence as orally imposed on April 12, 1996 and therefore hold that no error of any sort occurred when the original sentence as orally imposed was memorialized in the original judgment.[7]

[17] Alisasis' original theft sentence included a period of incarceration of five years with two of those years suspended, thus requiring a period of incarceration of three years, although Alisasis was eligible for parole after serving two of the three years.[8] The original forgery sentence included a period of incarceration of eight years with all eight years suspended and a five-year period of supervised probation to commence immediately upon his release from custody on the theft conviction. Pursuant to his original sentence, we find that Alisasis would have been incarcerated

[7] We further note that the original sentence as orally imposed and as appears in the original judgment is also identical to the sentence that appears in the written plea agreement executed by the People and Alisasis that was accepted by the trial court during Alisasis' change of plea hearing on February 1, 1996.

[8] The language in the original judgment regarding parole eligibility which also appears in the written plea agreement and which was also expressed orally at the imposition of sentence hearing on April 12, 1996, clearly illustrates the understanding by the parties that parole would, indeed, be a component of the original sentence. Counsel for Alisasis stated as follows at the April 12, 1996 sentencing hearing: "Your Honor, also, I assume that the Judgment will contain a provision such as the Plea Agreement that the Defendant will be eligible for parole after serving two of the three-year sentence . . . . [W]e agreed it was statutory . . . ." Tr. at 10-11 (Sentencing, Apr. 12, 1996). Guam law states that an incarcerated defendant shall be eligible for parole after serving two-thirds of their sentence in certain situations. 9 GCA § 80.70(a) (2005). Therefore the original sentence articulated Alisasis' eligibility for such parole consideration.

for a minimum of two years on the theft conviction prior to any eligibility for release from custody, that the theft sentence would have involved a period of parole upon Alisasis release and that the theft parole was contemplated to occur simultaneous to the forgery probation.

[18] As it appears in the amended judgment, the amended sentence which resulted from the June 12, 1997 joint motion is as follows, in relevant part:

> 1. That for the offense of Theft, (As a 2nd Degree Felony), the Defendant, Edwin V. Alisasis, is hereby sentenced to five (5) years imprisonment at the Department of Corrections. *The five (5) year sentence is hereby suspended* and the Defendant is placed on five (5) years of supervised probation on the following conditions:
>
> A. *The Defendant is to serve a period of four-hundred eighty six days incarceration* at the Department of Corrections, Mangilao, Guam;
>
> B. The Defendant is to receive credit for all time served;
>
> . . .
>
> 2. That for the offense of Forgery (As a 2nd Degree Felony) the Defendant, Edwin V. Alisasis, is hereby sentenced to eight (8) years at the Department of Corrections. The eight (8) year sentence is hereby suspended and the Defendant is placed on five (5) years supervised probation on the following conditions:
>
> A. The above sentence shall run CONSECUTIVELY to that imposed for Theft in paragraph #1;
>
> . . .

Appellant's Excerpts of Record, at 13, 16 (Amended Judgment) (emphasis added). Pursuant to the amended sentence, Alisasis' sentence for the theft conviction included five years of incarceration which was to be suspended in its entirety and supervised probation for five years, a condition of which would be a 486-day period of incarceration.

C. The Changes to Alisasis' Original Sentence Brought About through the Amended Judgment Were Beyond the Scope of Section 120.50

[19] We find that the trial court substantively changed Alisasis' sentence which is beyond the scope allowed by Section 120.50 when it amended the original sentence. Regarding the issue of incarceration alone, Alisasis' jail time was reduced from a minimum of two years, depending on when he may have been released on parole, to 486 days.[9] Such a reduction is simply not authorized by Section 120.50. *Kaye*, 739 F.2d at 490 ("the provisions of Rule 36 do not permit a substantive change in the period of incarceration which the defendant must serve.").

V.

[20] Because we find that the trial court did not possess the authority to change the original sentence as it did through entry of the amended judgment pursuant to Section 120.50, the amended judgment is hereby **VACATED** and the original judgment **REINSTATED** and the issues raised on appeal regarding the amended sentence need not be reached. This matter is **REMANDED** to the trial court for further proceedings consistent with this opinion.

[9] The Territorial Parole Board has jurisdiction over decisions regarding the release of prisoners on parole *See* 9 GCA § 80.70 (2005). While Alisasis was to be eligible for parole after serving two years of incarceration pursuant to his original three-year sentence, which was provided for by law pursuant to 9 GCA § 80.70(a) and recognized in his original sentence, the Territorial Parole Board would have been in the position to decide whether he would actually have been released. If parole were denied in such a situation, Alisasis may have served the entire three years of incarceration contemplated by the original sentence.