IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,
Plaintiff-Appellant

v.

STANLEY STEPHEN,
Defendant-Appellee.

THE PEOPLE OF GUAM,
Plaintiff-Appellant

v.

LUIS SANTOS DELIGUIN,
Defendant-Appellee.

THE PEOPLE OF GUAM,
Plaintiff-Appellant

v.

ANTHONY S. MICHAEL,
Defendant-Appellee.

OPINION

Cite as: 2009 Guam 8

Supreme Court Case No.: CRA08-003
Superior Court Case Nos.: CM0061-08, CM0060-08, CM0062-08

Appeal from the Superior Court of Guam
Argued and submitted on April 29, 2009
Mangilao, Guam

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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

CARBULLIDO, J.:

[1] This is a consolidated case involving three DUI defendants who were arrested in early February, 2007. All three defendants were given notices to appear on January 30, 2008 at 9:00 AM. The court did not convene until 10:00 AM that day, nor were the defendants listed on the court calendar. As a result, the defendants were never called for an initial hearing. At a rescheduled hearing, the Superior Court dismissed all three cases with prejudice. The People appealed. We find that the Superior Court abused its discretion in dismissing the complaints and therefore reverse.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] Defendants-Appellees Stanley Stephen, Luis Santos Deliguin, and Anthony Sikata Michael were arrested in the first week of February, 2007, for allegedly driving while under the influence of alcohol. At the time of their arrests, they were each given a notice to appear ("NTA") before the Superior Court on January 30, 2008 at 9:00 AM. Two days before their scheduled appearance, the People filed complaints against the defendants charging them with Driving While under the Influence of Alcohol (BAC) (Misdemeanor), Driving While under the Influence of Alcohol (Misdemeanor), and Reckless Driving (Misdemeanor). In addition, Deliguin was charged with Driving While under the Influence of a Schedule I Controlled Substance (Misdemeanor).

[3] Both Stephen and Michael appeared in Presiding Judge Lamorena's courtroom at 9:00 AM on January 30, 2008.[1] However, the Presiding Judge did not begin holding hearings until 10:00 AM that morning as scheduled. In addition, none of the defendants appeared on the calendar, and none of them were ever called.

[4] All three defendants were then summoned to appear for rescheduled initial hearings on March 12, 2008. In an odd twist, Stephen's summons was addressed to a possibly non-existent person, Hong Mi Ju Dollham, whose address was unknown. None of the defendants appeared for the March 12th hearing, and the Superior Court dismissed each case against the defendants with prejudice. Dismissal was "based on the Court's finding in an oral ruling that the summons was issued and the arraignment was scheduled after the NTA date." Appellant's Excerpts of Record ("ER"), tabs 3, 7, 11 (Proposed Orders of Dismissal with Prejudice, Apr. 23, 2008). The People timely appealed.

II. JURISDICTION AND STANDARD OF REVIEW

[5] This court has jurisdiction to hear the People's appeal from an order dismissing a criminal case pursuant to 48 U.S.C. 1424-1(a)(2) (West 2009), 7 GCA § 3107(a) (2005), and 8 GCA § 130.20(a)(5) (2005). In particular, 8 GCA § 130.20(a)(5) allows the People to appeal from "[a]n order or judgment dismissing or otherwise terminating the action before the defendant has been placed in jeopardy . . . ." 8 GCA § 130.20(a)(5) (2005).

[1] Deliquin may have also appeared on January 30, 2008, but his actions that day are not described in the Appellees'-Defendants' Brief. The omission may be explained by the fact that Deliquin appeared *pro se* in this case and was not represented by Attorney Fitzpatrick.

[6] The standard of review is more difficult to determine, because neither the Superior Court nor the parties indicate a source for the court's authority to dismiss the cases. Assuming the court felt that unnecessary delay had violated the defendants' due process rights, then the review would be for abuse of discretion. *People v. Mendiola*, 1999 Guam 8 ¶ 10; *United States v. Huntley*, 976 F.2d 1287, 1290 (9th Cir. 1991). If, on the other hand, the dismissals were based upon the defendants' right to a speedy trial, that determination must be reviewed *de novo*. *Mendiola*, 1999 Guam 8 ¶ 22; *Coffey v. Gov't of Guam*, 1997 Guam 14 ¶ 6.

III. DISCUSSION

[7] The Superior Court's only indication of the legal basis for its decision was the following brief statement, which appears in each defendant's order of dismissal: "The dismissal is with prejudice based on the Court's finding in an oral ruling that the summons was issued and the arraignment was scheduled after the NTA date." ER, tabs 3, 7, 11 (Proposed Orders of Dismissal with Prejudice). As the People correctly assert in their brief, there is no statutory or court-mandated rule requiring a court to dismiss a criminal complaint simply because an arraignment occurs after the NTA date. Appellant's Br. at 1, 3-5 (Dec. 22, 2008). Based on the court's brief statement, we are unable to determine the legal basis for its order. Often, our inability "to identify or infer a clear and consistent finding by the trial court" will require a remand. *People v. Farata*, 2007 Guam 8 ¶ 51. However, in this case it is clear that the Superior Court objected to the delay caused by the scheduling error, and the determination of whether that delay justified dismissal with prejudice is a legal question that can be answered by this court without additional fact finding. Although it would have been helpful to

examine the court's legal reasoning in detail, we can just as easily examine the statutory and constitutional sources for the court's authority ourselves, and determine whether the decision to dismiss was justified.

[8] We begin by examining the constitutional protections against prosecutorial delay. The first is the Sixth Amendment requirement that "the accused shall enjoy the right to a speedy and public trial." U.S. Const. amend. VI; *see also* 48 U.S.C. 1421b(g) & (u) (West 2009) (incorporating the Sixth Amendment into Guam law). The second is the protection found in the Due Process Clause, which is applied to delays not covered by the Sixth Amendment. *Huntley*, 976 F.2d at 1290; *see also* 48 U.S.C. 1421b(e) & (u) (West 2009) (incorporating the Due Process Clause into Guam law). As we proceed through this analysis, we are also guided by provisions within Guam's statutes including: (1) the one-year statute of limitations for prosecution of misdemeanors found in 8 GCA § 10.30 (2005); (2) the *de facto* statute of limitations found in 8 GCA § 25.30 (2005) and interpreted in *People v. Palomo*, 1998 Guam 12; (3) the court's power to dismiss a case for "unnecessary delay" found in 8 GCA § 80.70(b) (2005); and (4) the requirement that a defendant be "arraigned promptly" found in 8 GCA § 60.10(a) (2005).

A. The Sixth Amendment Right to a Speedy Trial

[9] The Sixth Amendment right to a speedy trial attaches only after a criminal prosecution has begun and the defendant becomes "accused" of a crime. *United States v. Marion*, 404 U.S. 307, 313 (1971). In *Marion*, the Supreme Court of the United States held that "it is either a formal indictment or information or else the *actual restraints imposed by arrest and holding to answer* a criminal charge that engage the

particular protections of the speedy trial provision of the Sixth Amendment." *Id.* at 320 (emphasis added). The first question we must answer in applying this rule is whether each defendant's arrest and release with an NTA was "arrest and holding to answer" for purposes of applying the speedy trial right. *Id.*

[10] A similar situation was before the Court in *United States v. Loud Hawk*, 474 U.S. 302 (1986). The defendants in *Loud Hawk* were released without bail after their indictments were dismissed because evidence was suppressed and the prosecution could not proceed. *Id.* at 306-08. Seven years later, after a prolonged appeals process involving rehearing, rehearing *en banc*, and petition for certiorari, the defendants' indictments were finally reinstated. *Id.* at 308-10. The defendants successfully argued in the trial court that their Sixth Amendment right to a speedy trial had been violated, and the prosecution appealed all the way to the Supreme Court. *Id.* at 309-10. The Court reversed and held that "when defendants are not incarcerated or subjected to other substantial restrictions on their liberty, a court should not weigh that time towards a claim under the Speedy Trial Clause." *Id.* at 312. The Court then proceeded to apply the speedy trial analysis only to the delays that occurred *after* the defendants' indictments had been reinstated. *Id.* at 312-17.

[11] The defendants argue that they suffered "the anxiety and concern of the accused" after they were arrested, presumably because their scheduled hearing might result in charges being filed against them. Appellees' Br. at 6-7 (Jan. 21, 2009) (quoting *Barker*, 407 U.S. 532). A similar argument was rejected in *Loud Hawk*. 474 U.S. at 312. There, the fact that the defendants were required to appear at an evidentiary hearing at one point was not considered "actual restraint" for purposes of invoking the right to a

speedy trial. *Id.* The Court also concluded that neither the government's obvious intent to prosecute the defendants nor the fact that the defendants found it necessary to hire attorneys during their release was sufficient to invoke the speedy trial right. *Id.* at 311-12. Applying the same reasoning here, we must conclude that the mere fact that the defendants were arrested, served with NTAs, and released does not, by itself, invoke the right to a speedy trial. Although the defendants almost certainly felt some anxiety due to their pending hearings, their arrest and release without bond did not render them "accused" for purposes of the Sixth Amendment.

[12] If a defendant is not arrested and held to answer, the speedy trial right attaches at the time of indictment. *Marion*, 404 U.S. at 321. Of course, there are no indictments in the present case for determining when a defendant becomes "accused" for purposes of the speedy trial right. Here, the defendants have been charged only with misdemeanors. In Guam, a complaint, rather than an indictment, is sufficient to charge a defendant accused of committing a misdemeanor. 8 GCA § 1.15 (2005). Because a complaint is analogous to an indictment in that both are accusatory pleadings, it follows that the Sixth Amendment speedy-trial right would attach upon the filing of a complaint in misdemeanor cases, provided that the defendant was released soon after arrest without having to post a bond.

[13] California courts, which review accusatory pleadings similar to those used in Guam, have reached a similar conclusion and have determined that in misdemeanor cases, the Sixth Amendment speedy trial right attaches upon the filing of a complaint. *People v. Martinez*, 996 P.2d 32, 41 (Cal. 2000). The right attaches whether or not the defendant is made aware of the complaint. *Cf. Doggett v. United States*, 505 U.S. 647,

648, 653 (1992) (speedy trial violation found where defendant was unaware of indictment for over eight years). Thus, under this reasoning, only the approximately six-week delay between the filing of the complaints on January 28, 2008 and the rescheduled initial appearance on March 12, 2008 would be subject to a speedy trial analysis.

[14] Our speedy-trial analysis must therefore examine the approximately six-week delay between the filing of the complaints and dismissal of the cases. In determining whether the Sixth Amendment right to a speedy trial has been violated, one must consider: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of the right to a speedy trial; and (4) whether or not prejudice resulted from the delay. *Mendiola*, 1999 Guam 8 ¶ 22. Here, the defendants did not assert their right to a speedy trial, but there was little opportunity to do so given that their cases were dismissed at the rescheduled hearing. More relevant is the fact that the defendants were not able to articulate any specific reason they might have been prejudiced by the delay. The lack of demonstrated prejudice weighs against a speedy-trial dismissal.

[15] The reason for the delay appears to be a combination of mistakes on the part of the Attorney General's Office, the Superior Court, and possibly the officer who filled out the original NTAs. Based on the record, we are unable to determine the reason that the original hearing was held at 10:00 AM even though the NTA indicated 9:00 AM. Why the defendants' names were absent from the calendar that day is also a mystery, and we are at a loss as to whether the court or the Attorney General's Office is the party responsible for the mistake. However, the prosecuting attorney assigned to the hearing had an opportunity to correct the mistake by requesting the defendants be called before

the judge. Because at least some of the delay can be attributed to the People, this factor weighs in the defendants' favor.

[16] Finally, we consider the length of the delay. Sometimes, the delay itself can be long enough to be "presumptively prejudicial." *Doggett*, 505 U.S. at 651-52. However, the approximately six-week delay between complaint and the first hearing was far less than other delays typically found to be constitutional. *See United States v. Dirden*, 38 F.3d 1131, 1138 (10th Cir. 1994) (seven and one half months delay between arraignment and trial not presumptively prejudicial under a speedy trial analysis); *United States v. Sears, Roebuck and Company, Inc.*, 877 F.2d 734, 740 (9th Cir. 1988) (speedy trial objections were denied when made seven and one half years after first indictment); *United States v. Lane*, 561 F.2d 1075, 1077-79 (2d Cir. 1977) (58 month delay between indictment and trial did not violate Sixth Amendment). The United States Supreme Court noted that "courts have generally found postaccusation delay 'presumptively prejudicial' at least as it approaches one year." *Doggett*, 505 U.S. at 652 n.1. The length of the post-complaint delay at issue here does not begin to approach one year and therefore weighs against a finding that the speedy-trial right has been violated.

[17] In the final analysis, only the reason for the delay weighs in favor of finding a violation of the defendants' Sixth Amendment speedy-trial rights. Other factors—particularly the lack of demonstrated prejudice and the relatively short delay—support a finding that this right has not been violated. After considering all the factors on *de novo* review, we find that rescheduling the initial appearance after the NTA date did not violate the Speedy Trial Clause of the Sixth Amendment. The Superior Court therefore

would have erred in dismissing the complaints based on a Sixth Amendment speedy-trial analysis.

B. Pre-Complaint Delay

[18] Next, we examine the eleven-month delay between the defendants' arrests and the filing of the complaints against them. In the federal courts, pre-indictment[2] delay can sometimes violate a defendant's right to due process or trigger the proscription against "unnecessary delay" found in Rule 48(b) of the Federal Rules of Criminal Procedure. *Huntley*, 976 F.2d at 1290. A similar analysis would also apply in Guam. Due process is incorporated into Guam law through the Organic Act. 48 U.S.C. 1421b(u). In addition, 8 GCA § 80.70(b) states that: "If there is *unnecessary delay in bringing a defendant to trial*, the court, on its own motion, may dismiss the indictment, information or complaint. The reasons for the dismissal shall be set forth in an order entered upon the minutes." 8 GCA § 80.70(b) (emphasis added).

1. Unnecessary Delay

[19] Section 80.70 is based on Rule 48 of the Federal Rules of Criminal Procedure. 8 GCA § 80.70, NOTE. Rule 48 and section 80.70 are substantially similar with one significant difference—Rule 48 specifically mentions pre-indictment delays while section 80.70 does not. *See* Fed. R. Crim. Proc. 48(b) ("The court may dismiss an indictment, information, or complaint if unnecessary delay occurs in: (1) presenting a charge to a grand jury; (2) filing an information against a defendant; or (3) bringing a

[2] For purposes of this section, we treat pre-indictment and pre-complaint delay as analogous, since the speedy-trial right attaches with the filing of either accusatory pleading in the absence of actual restraint. *Cf. Martinez*, 996 P.2d at 41; *see also* 8 GCA § 80.70(b) (2005) (allowing dismissal for unnecessary delay when the accusatory pleading is an indictment, an information, or a complaint).

defendant to trial."). Section 80.70(b) only refers to delay in bringing a defendant to trial. 8 GCA § 80.70(b).

[20] One possible explanation for the differences between section 80.70(b) and Rule 48(b) is that the Legislature did not intend to give the Superior Court the statutory power to dismiss cases for pre-indictment or pre-complaint delays. Alternately, the Legislature may have simply decided that "delay in bringing a defendant to trial" was broad enough to cover the entire period from arrest to trial. 8 GCA § 80.70(b).

[21] We need not decide the issue here. Even if section 80.70(b) is applicable to pre-indictment delays, the facts of this case do not justify a finding of unnecessary delay. We are guided by federal law in holding that a section 80.70(b) dismissal, like a Federal Rule 48(b) dismissal, "should be imposed only in extreme circumstances." *United States v. Sears, Roebuck & Co.*, 877 F.2d 734, 737 (9th Cir.1989). In fact, both the Seventh and Ninth Circuits allow a case to be dismissed for unnecessary delay only after a court has forewarned the prosecution of the impending dismissal. *United States v. Clay*, 481 F.2d 133, 137-38 (7th Cir.1973); *Huntley*, 976 F.2d at 1292. This rule is a sensible one. If a court is to apply the harsh rule of dismissing a criminal case with prejudice under section 80.70(b), it must either establish local rules that are uniformly applied or warn the prosecution that further delay could jeopardize the case. *See Clay*, 481 F.2d at 138 (7th Cir.1973).

[22] Here the People were not only unaware that an eleven month delay might result in dismissal of their case, they were acting on the advice of this very court. In *People v. Villapando*, this court *recommended* that the Attorney General's office push back the NTA date so that the prosecution would have more time to investigate and prepare a

case. 1999 Guam 31 ¶ 31. Specifically, this court stated that "the People may instruct the police to set the notice to appear date further off, yet still within the applicable *de jure* [statute of limitations]." *Id.*[3] Common sense dictates that the People should not be penalized for following our previous advice.

[23] Finally, even if we consider the total effect of the delay between arrests and the rescheduled initial hearing, the fact remains that the People had no warning that the cases were in immanent danger of dismissal. Because the Superior Court did not forewarn the prosecution that further delay would result in dismissal, it would have been improper to dismiss the cases for unnecessary delay under section 80.70(b). *Huntley*, 976 F.2d at 1292.

2. Due Process

[24] In *People v. Mendiola*, this court had occasion to apply a due process analysis to a pre-indictment delay. 1999 Guam 8 ¶¶ 10-21. There, the defendant was indicted for murder nearly three years after the death of the victim. *Id.* ¶ 5. The opinion set forth the defendant's burden in showing that he was denied due process because of delay as follows:

> Pre-indictment delay violates due process only if the defendant meets a two-part test. *United States v. Huntley*, 976 F.2d 1287, 1290 (9th Cir.1992). First, "the defendant must prove actual, nonspeculative prejudice from the delay." *Id.* If the defendant meets this burden, the second part of the test shall then be employed. To meet the second step, the defendant must prove that, "the length of the delay, when balanced against the reason for the delay, [offends] those fundamental conceptions of justice which lie at the base of our civil and political institutions." *Id.* citing *United States v. Sherlock*, 962 F.2d 1349, 1353-54 (9th Cir.1992).

[3] This suggestion was likely motivated by the fact that the decision of *Villapando* freed sixteen defendants accused of very serious felonies—all because the indictments were obtained after the NTA date in violation of 8 GCA § 25.30. *Id.* ¶¶ 1-18, 55-56.

Id. ¶ 11. The burden of showing prejudice is a heavy one. *Id.* ¶ 13. In the end, we determined that the defendant in *Mendiola* had failed to carry his burden of showing that he was prejudiced by the delay. *Id.* ¶¶ 17-19.

[25] Here too, the defendants do not give any examples of "actual, nonspeculative prejudice from the delay." *Id.* ¶ 11. Besides the usual fading of memories common to all delays, the defendants can point to no specific loss of evidence or witnesses resulting from the delay. In contrast, the defendant in *Mendiola* was able to point to specific items that had been lost, including a t-shirt and the results of a polygraph test. *Id.* ¶ 19. Even so, we found no actual prejudice. *Id.* Because the defendants here have not met their heavy burden of showing prejudice due to the delay, we need not determine whether the delay offends our fundamental concepts of justice. *Id.* ¶ 11. It would be an abuse of discretion for a court to find that the delay denied due process to defendants under the facts of this case.

C. Whether the Prosecution Violated Statutory Time Limits

[26] Next, we consider whether the Superior Court could have dismissed the complaints based on any other time limitations found in our statutes or case law.

1. The *de jure* Statue of Limitations

[27] All of the defendants were charged with non-felonies. Appellant's Br. at 2. According to 8 GCA § 10.30, "[a] prosecution for any offense which is not a felony shall be commenced within (1) year after it is committed." 8 GCA § 10.30 (2005). A prosecution commences "when either an indictment is presented in open court and there received and filed *or a complaint is filed.*" 8 GCA § 10.70 (2005) (emphasis added).

Because the People filed each complaint within a year of the arrests, the prosecutions were commenced within the *de jure* statute of limitations.

2. The *de facto* Statute of Limitations

[28] This court established a *de facto* statute of limitations in *People v. Palomo* and *People v. Villapando*. 1998 Guam 12 ¶ 14; 1999 Guam 31 ¶ 22. In both *Palomo* and *Villapando*, the People failed to file a complaint or indictment before the NTA date as required by 8 GCA § 25.30.[4] 1998 Guam 12 ¶ 2; 1999 Guam 31 ¶¶ 3-18. The court in *Palomo* interpreted 8 GCA § 25.30 as a *de facto* statute of limitations—if a complaint is not filed before the NTA date, the result is dismissal with prejudice. 1998 Guam 12 ¶ 14. *Villapando* extended the rule to encompass felony indictments as well. 1999 Guam 31 ¶ 44. However, 8 GCA § 25.30 is not applicable in the present case. Here, the complaints were properly filed before the NTA date, and the *de facto* statute of limitations found in 8 GCA § 25.30 does not apply.

3. The Statutory Speedy Trial Requirement

[29] Title 8 GCA § 80.60(a)(3) requires that a defendant who is not in custody be brought to trial within sixty days of arraignment. None of the defendants were in custody following their arrest. The sixty day limit of 8 GCA § 80.60(a)(3) has not yet

[4] **§ 25.30. Notice to Appear: Where Delivered.**

> The officer shall forthwith deliver the copy of the notice to appear to the prosecuting attorney charged with the duty to prosecute the offense charged. At or before the time at which the person promised to appear, if the prosecuting attorney determines that the offense should be prosecuted, he shall file the notice to appear and a complaint and affidavits which satisfy the requirements of § 45.20 in the court in which the person has promised to appear. If the prosecuting attorney determines that the offense should not be prosecuted he shall make a reasonable effort to notify the person arrested that his appearance will not be required.

8 GCA § 25.30 (2005).

taken affect because the cases were dismissed before the defendants could be arraigned. It therefore has no application here.

4. Prompt Arraignment

[30] According to 8 GCA § 60.10(a), "[t]he defendant shall be arraigned promptly . . . after the complaint is filed . . . ." 8 GCA § 60.10(a) (2005). One possible interpretation of section 60.10(a) is that the Legislature intended to convey a special sense of urgency in scheduling the arraignment after the filing of a complaint. Another is that the statute is simply an expression of the speedy trial requirement. If the former interpretation is true, then the post-complaint delay might require a separate analysis under section 60.10(a).

[31] The language in 8 GCA § 60.10(a) requiring a defendant to be promptly arraigned is of unknown origin. The Federal Rules of Criminal Procedure contain no such language. *See, e.g.*, Fed. R. Crim. Proc. 10. The compiler's note to 8 GCA 60.10 indicates that "[s]ubsection (a) of § 60.10 continues the substance of former § 976. *See also* Cal. Pen. Code § 976." However, the old Guam Penal Code § 976 does not require a defendant to be "promptly arraigned." *See* Guam Pen. Code § 976 (1953) ("When the information is filed, the defendant must be arraigned thereon before the court in which it is filed, unless the case is transferred to some other court for trial."). The section of the California Penal Code upon which our old section 976 was based no longer exists.

[32] The one Guam case that mentions section 60.10(a) appears to conflate the prompt arraignment requirement with the general requirement that defendants be given a speedy trial:

> On January 10, 1983, counsel for appellant orally moved the court to dismiss the indictment against the appellant for lack of a prompt arraignment pursuant to [s]ection 60.10a, 8 Guam Code Annotated, *and consequently the lack of a speedy trial.* This motion was denied . . . .

People v. Kasinger, 1984 WL 48832, at *1 (D. Guam App. Div., Aug. 17, 1984) (emphasis added). The court rejected the defendant's speedy trial arguments, noting that the delay was "merely a matter of weeks" and that the defendant had failed to demonstrate how he was prejudiced. *Id.* at 8. We agree that the prompt arraignment requirement of 8 GCA § 60.10(a) is a statutory expression of the speedy trial right. We also agree, as discussed in detail above, that a delay involving "merely a matter of weeks" does not, in most circumstances, violate a defendant's right to a speedy trial. *Id.*

D. Whether a Summons should have been issued earlier

[33] The defendants argue that the People failed to issue a summons, and therefore were bound to hold a hearing on the NTA date. Appellees' Br. at 8-11. This argument is based on the language of *Palomo*, which states the following:

> Two options are available to the People in choosing how to prosecute a case. First they can proceed pursuant to 8 GCA §§ 15.10 and 15.20 by filing a complaint with affidavits to establish probable cause so that a summons will issue. In that event, section 10.30 would govern the time-line within which the case may be prosecuted. Alternatively, the People may proceed pursuant to section 25.30. Consequently, after issuing a notice to appear, the People are bound by the language of that statute. The language of section 25.30 is clear. The statute mandates action to be taken by the People prior to the notice to appear date— either to file the notice to appear and a complaint with affidavits or to make reasonable efforts to notify the defendant that he need not appear.

1998 Guam 12 ¶ 14. In a misdemeanor prosecution, the People can either file a complaint and rely on the NTA, or file a complaint and cause a summons to be issued. *Id.* In the instant case, the People have chosen to rely on the NTA.

[34] While it is true that the People relied on the NTA date rather than a summons, *Palomo* does not stand for the proposition that failure to hold a hearing on the NTA date must result in an automatic dismissal with prejudice. The decision of *Palomo* simply interpreted the plain language of 8 GCA § 25.30 to mean that a complaint must be filed before the NTA date. *Id.* Because section 25.30 prevents the prosecution from filing the complaint once the NTA date has passed, the only possible result of failing to timely file the complaint is to completely bar future prosecution. *Id.* ¶ 17. As a result, we found that dismissal with prejudice was required, even in the absence of demonstrated prejudice to the defendant. *Id.* & n.8.

[35] Here, the situation is very different. The complaints were filed within the statute of limitation and before the NTA date, thereby satisfying all statutory requirements. *See* 8 GCA §§ 10.30, 25.30. No absolute bar prevented the prosecution from continuing once the NTA date passed without a hearing. Unlike the situation in *Palomo*, a remedy was still available. That remedy, which was applied in these cases, was to issue summonses and reschedule the hearing for a later date.

[36] *Palomo* does not support or suggest an extension of its reasoning to procedural errors like the one at issue here. In fact, we noted in *Palomo* that California has amended its version of 8 GCA § 25.30, and we criticized our own unamended version for producing such harsh results:

> Although a harsh result may occur, the problem exists not within the judicial system, but instead with the Legislature where the sole remedy lies in the amendment or repeal of section 25.30. It is impossible for this court to make sense out of an ill-conceived statutory scheme.

1998 Guam 12 ¶ 17. Our decision was more a reluctant application of the law as written than an expression of fundamental notions of justice. We therefore decline to

create a bright-line rule, unsupported by statute, that would result in automatic dismissal every time an initial hearing failed to occur on the NTA date. Instead, we are confident that justice will result from applying the established speedy-trial analysis to the resulting delay.

E. Whether the Dismissals Violated the Separation-of-Powers Doctrine

[37] The People argue that the court interfered with the Executive Branch function, which is to execute the laws, when it dismissed the cases. Appellant's Br. at 5-9. More specifically, the People contend that the initial appearance does not have to occur on the NTA date, and the Superior Court should have fulfilled its "Magistrate function" by rescheduling the hearing. *Id.* at 8-9. The Appellant's Brief does not clearly articulate how dismissing the cases caused the Judicial Branch to unlawfully interfere with the Executive Branch.

[38] A similar separation-of-powers argument was raised in *Villapando* to no avail. 1999 Guam 31 ¶ 45-50. In *Villapando*, the People argued that reading a *de facto* statute of limitations into 8 GCA § 25.30 interfered with prosecutorial discretion, thus infringing on a power wholly under the province of the Executive Branch. *Id.* ¶ 45. This court held that prosecutorial discretion was not unlimited, and that the law commonly imposed time limits on a prosecutor's ability to bring a criminal case. *Id.* ¶ 48. We therefore concluded that the imposition of an additional time constraint through our interpretation of 8 GCA § 25.30 did not infringe upon the prosecutor's discretion. *Id.* ¶¶ 48-50.

[39] The People cite to *Taisipic v. Parole Board* where the Superior Court had ordered an inmate paroled. 1996 Guam 9 ¶ 16. This court determined that the decision

as to whether an inmate should be paroled is clearly an Executive Branch function, and that the court was not authorized to make such decisions. *Id.* ¶ 25. The present case is very different in that the act of dismissing a prosecution with prejudice is clearly a power reserved for the Judicial Branch. Even the prosecutor cannot dismiss a complaint without permission from the court. *See* 8 GCA § 80.70(a). Whether the dismissal was an abuse of discretion or unauthorized under the law is a separate issue, but it cannot be said that the Superior Court acted in a manner inconsistent with its judicial function. The dismissals certainly interfered with the prosecutions, but that alone does not raise separation-of-power concerns. In other words, dismissing a case for unnecessary delay is just as much a "Magistrate function" as rescheduling a hearing.

[40] If, in dismissing the defendants' cases, the Superior Court was exercising its statutory powers under 8 GCA § 80.70(b) and the like, we find nothing in those statutes to be so offensive to the Separation-of-Powers Doctrine as to require this court to strike them down as unconstitutional or inorganic. If, on the other hand, the Superior Court was applying the Due Process Clause or the Speedy Trial Clause in dismissing the cases, it was simply exercising those powers given to the Judicial Branch by the Constitution itself. *See* 48 U.S.C. 1421b (incorporating constitutional rights into Guam law). Although we agree that the dismissals at issue here were improper, the error resulted from a misapplication of the law rather than an encroachment of the Judicial Power on the Executive Branch.

IV. CONCLUSION

[41] The People satisfied all statutory requirements when they filed complaints against the defendants within the one-year statute of limitations and before the original

NTA date. It would be an abuse of discretion for the Superior Court to have dismissed the cases due to the eleven-month delay between arrest and filing of the complaints. Similarly, the approximately six-week delay between the complaint and the rescheduled initial appearance did not violate the defendants' right to a speedy trial. Because we can find no sound legal reason for the Superior Court's decision, dismissal of the complaints against defendants must be **REVERSED.** The cases are **REMANDED** for further proceedings.

Original Signed By: **F. Philip Carbullido**
F. PHILIP CARBULLIDO
Associate Justice

Original Signed By: **Katherine A. Maraman**
KATHERINE A. MARAMAN
Associate Justice

Original Signed By: **Robert J. Torres**
ROBERT J. TORRES
Chief Justice