IN THE SUPREME COURT OF GUAM

ROLAND S. QUINATA,
Petitioner,

v.

SUPERIOR COURT OF GUAM
Respondent,

and

PEOPLE OF GUAM,
Real Party in Interest.

Supreme Court Case No.: WRM09-002
Superior Court Case No.: CF0458-09

OPINION

Cite as: 2010 Guam 8

Verified Petition for Writ of Mandamus
Argued and submitted on March 11, 2010
Hagåtña, Guam

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

MARAMAN, J:

[1] Petitioner Roland S. Quinata filed a Verified Petition for Writ of Mandate ("Petition") on December 22, 2009. The Petition alleged that Quinata's statutory right to a speedy trial had been violated, and requested that this court issue a writ of mandate, ordering the Superior Court to vacate its December 22, 2009 order denying Quinata's motion to dismiss. For the reasons stated below, we deny the Petition, finding that Quinata's speedy trial right has not been violated.[1]

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] On September 18, 2009, Petitioner Roland S. Quinata was indicted on multiple counts of criminal sexual conduct and child abuse. On September 23, 2009, he was arraigned, pleaded not guilty, requested a jury trial, and asserted his right to a speedy trial. Quinata, who was first incarcerated on September 10, 2009, remained incarcerated at the time of the arraignment. Two days after the arraignment, the Superior Court held a trial-setting at which it scheduled the trial to begin on November 5, 2009, forty-four days after the arraignment date and one day before the anticipated expiration of the speedy trial clock.

[3] On November 3, 2009, a hearing was held at which Quinata was denied bail or release to a third-party custodian, and he remained in custody. Quinata asserts that he maintained his right to a speedy trial at this bail hearing. However, the Decision and Order reflects that at this hearing, the court advised both the People and Quinata that the matter "would have to toll another asserted matter before the Court at that time." Dec. & Order on Mot. to Dismiss at 3

[1] This Opinion supersedes the Order denying the Petition issued on April 7, 2010.

(Dec. 22, 2009). The court minutes reveal that Quinata was present during the following exchange:[2]

> THE COURT: Now, there are a few matters I'd just like you to be advised of. First this trial set for Mr. Quinata, this is set for - -
>
> MR. HATTORI: I think it's - -
>
> THE COURT: - - Set for the 5th of November would trail the Mannix Songeni trial. And I will let you know, Mr. Hattori, since [sic] that trial is over with, we'll call this back for another pretrial conference.

Transcript ("Tr.") at 3 (Mot. To Dismiss, Nov. 3, 2009).

[4] The court and counsel for both parties went on to discuss a number of related issues, including pending motions, the People's notice of intention to offer evidence, and witness lists. *Id.* at 3, 6. Then the court stated:

> THE COURT: Okay. Now, we won't – not – know when we're going to begin or what the trial scheduling hours would be, and I'll save that for the continued pretrial conference in this matter.
>
> I will be awaiting, Counsels, as soon as you possibly can, at least before the next hearing, your brief statements regarding the case and the issues.

Id. at 7.

[5] After further discussion in which no objection was lodged, the court continued:

> THE COURT: And I think what I would do then, Counsel, noting what I have received so far, is continue this pretrial conference.
>
> Mr. Hattori, hopefully you understand the Court is in an asserted matter and will go ahead and allow both sides to file whatever other information, statements, that they need to. And just so you would know, Mr. Hattori, more than likely the

[2] In ruling on a petition for a writ of mandate, this court sits in original, not appellate, jurisdiction. To resolve an apparent discrepancy between Quinata's account of what transpired at the November 3rd hearing and the account of Respondent, as reflected in the Superior Court's citation to the hearing Minutes in the Decision and Order, we independently obtained the Court Minutes as well as hearing transcripts from the Clerk for the November 3rd and November 13th hearings. These transcripts were not furnished as exhibits in support of or in opposition to the Petition, but assisted us in our determination.

> Court will be calling this case back either early next week, Monday or Tuesday, to give you an update. All right?
>
> MR. HATTORI: Yes, Your Honor.

Id. at 8, 9.

[6] The court did not call the matter back on Monday or Tuesday of the next week. Instead, on Friday, November 13, 2009, the court held another pretrial conference, resetting jury selection and trial to December 22, 2009. Petitioner Quinata was present. Tr. at 2 (Pre-trial Conf., Nov. 13, 2009). Quinata did not lodge an objection:

> THE COURT: [. . .] jury selection will begin December 22nd being that he asserted; all right?
>
> MR. HATTORI: All right. Thank you, Your Honor.

Id. at 4.

[7] Less than one week later, on November 19, 2009, Quinata filed a motion to dismiss the indictment based upon the violation of his speedy trial rights. The court set the motion for argument on November 27, 2009 and ordered the People to file an opposition by November 25, 2009. Quinata remained incarcerated until he waived speedy trial at the November 27 hearing, when he was released under supervision of third-party custodians and house arrest.

[8] At the motion hearing, Quinata argued that he should have been afforded a trial within forty-five days after his arraignment, pursuant to 8 GCA § 80.60, and also argued that none of the relevant exceptions to 8 GCA § 80.60(a)(2) applied. Quinata was in custody at the time of arraignment and asserted his right to a speedy trial on September 23, 2009, starting a 45-day speedy trial clock that expired on November 6, 2009. Petition, Ex. G at 2 (Dec. & Order, Dec. 22, 2009). Quinata contended that as of November 18, 2009, the day before Quinata filed the motion to dismiss, the speedy trial clock had been expired for more than twelve days. Petition, Ex. D at 2 (Mot. Dismiss).

[9] The court took the motion under advisement and issued an oral denial at a pretrial conference on December 22, 2009, filing a written decision and order later that day. On the afternoon of December 22, 2009, Quinata filed the Petition requesting this court to vacate the Decision and Order, and direct the Superior Court to dismiss with prejudice all pending charges against Petitioner in Superior Court Case No. CF0458-09.

II. JURISDICTION

[10] This court has jurisdiction over original proceedings for mandamus pursuant to 7 GCA § 3107(b) and 7 GCA §§ 31202 and 31203 (2005). A writ of mandate proceeding is an appropriate remedy when challenging a trial court's denial of a motion to dismiss for lack of a speedy trial. *People v. Nicholson*, 2007 Guam 9 at ¶ 7, citing *Carver v. Super. Ct. (People)*, 1998 Guam 23 at ¶ 9.

III. ANALYSIS

[11] In deciding whether to grant the writ of mandamus, we must first determine whether the Superior Court correctly decided that Quinata consented to postponing the trial beyond the statutory period each time he failed to object to the court's continuance of the trial, upon the court's own motion. We then consider whether Quinata's subsequent trial dates were within the ten-day grace period established in 8 GCA §80.60(b)(1). Finally, we address the Superior Court's determination that there was good cause for the delay.

A. The defendant's implied consent to a postponement under 8 GCA §80.60(b)(1)

[12] In denying Quinata's motion to dismiss on speedy trial grounds, the Superior Court determined that the speedy trial clock was tolled on November 3rd, three days before the original speedy trial deadline of November 6, 2009. Petition, Ex. G at 3 (Dec. and Order). At the November 3rd hearing, the court continued the matter on its own motion, after having "advised

both the People and Defendant that trial in this matter would have to toll another asserted matter before the Court at that time." *Id.* The court acknowledged that a continuance entered on the trial court's own motion may not typically be chargeable to the defendant. *Id.* However, the court held that Quinata was deemed to have agreed to the continuance, because he and his counsel failed to object when the court stated it was continuing the matter. *Id.*

[13] Whether a defendant's failure to object to the court's postponement on its own motion of trial beyond the prescribed statutory period may be deemed the defendant's implied consent under 8 GCA § 80.60(b)(1) is an issue of first impression for this court. Title 8 GCA § 80.60(a)(2) provides that the court shall dismiss a criminal action if the trial of a defendant in custody at the time of his arraignment has not commenced within forty-five (45) days after his arraignment. 8 GCA § 80.60(a)(2) (2005). However, such an action will *not* be dismissed if the action is set on a date beyond the prescribed period upon motion of the defendant or with his consent, *express or implied*, and he is brought to trial on the date so set or within ten (10) days thereafter. 8 GCA § 80.60(b)(1) (2005) (emphasis added).

[14] The plain language of the statute provides that the defendant's consent to the postponement need not be express, but may be implied. Our interpretation of whether a defendant's consent may be implied from the defendant's failure to object is informed by California decisions construing California Penal Code § 1382, the statute from which Guam's law is derived. In the case of *Eshaghian v. Municipal Court of Los Angeles Judicial District*, a California court of appeals explained the rationale behind the implied consent provision:

> The statute itself contemplates that there may be implied consent on the part of a defendant. If there were not this acknowledgment by the Legislature that the consent may be implied from conduct, a sophisticated defendant might keep quiet while his counsel is seeking or consenting to a continuance for defendant's very

> benefit, and then blandly urge . . . that his silence constitutes failure to consent or even an "implied objection."

Eshaghian v. Los Angeles Dist. Mun. Ct., 214 Cal. Rptr. 712, 717 (Ct. App. 1985).

[15] California courts have adopted the rule that a defendant's consent may be "presumed when the defendant fails to object at the time the cause is set for trial beyond such period." *Ray v. Super. Ct. of San Diego County*, 281 P. 391, 392 (Cal. 1929) (en banc) (citations omitted); see also *People v. Taylor*, 338 P.2d 377, 378 (Cal. 1959) (en banc) (holding that the trial court did not err in denying a motion to dismiss pursuant to section 1382 where defendant did not object to the delays at arraignment or at the hearing upon which she entered her change of plea). Even if the defendant does not seek or expressly consent to a continuance or setting beyond the period, a defendant may waive the right to dismiss by failing to object. *See* 5 Witkin, Cal. Crim. Law 3d (2000), Criminal Trial, § 320. The defendant's consent is implied: "Failure to object is the equivalent of consent." *Id.*, citing *People v. O'Leary*, 278 P.2d 933, 937 (Cal. 1955). *See also People v. Anderson*, 272 P.2d 805, 806 (Cal. Ct. App. 1954) (stating rule that where cause was set for trial in presence of defendant and counsel, and no objection was made to date beyond statutory period, objection was deemed waived).

[16] The Appellate Division of Guam appears to have adopted this rule in *People v. Palomo*, Nos. DCA 91-00061A, DCA 91-00062A, 1993 WL 129624, at *9 (D. Guam App. Div. 1993). The Appellate Division determined, with minimal discussion, that defendants waived their right to a speedy trial when the court, without objection of any kind from any party, set a new trial date. *Id.* (stating "time extensions made with appellants' express or implied consent are excludable pursuant to 8 GCA § 80.60(b)(1). Appellants waived their right to a speedy trial by not objecting to the March 5th trial date.").

[17] The purpose of the requirement that a defendant object at the time the cause is set for trial beyond the statutory period is two-fold. "First, by calling the attention of the trial court to the facts upon which the objection is founded, it may serve to procure an earlier trial of the defendant and thus earlier end his durance or encompass his conviction." *People v. Lind*, 229 P. 990, 991 (Cal. 1924) (citations omitted). Second, "the objection must be made as a forerunner to a motion to dismiss, for it has been uniformly determined that on appeal an order denying the motion will be affirmed if the record does not show that the objection was made." *Id.*

[18] In *People v. Wilson*, the court explained that the right to a speedy trial will be deemed waived unless the defendant both objects to the date set and thereafter files a timely motion to dismiss. 383 P.2d 452, 457 (Cal. 1963) (en banc). A statement by the defendant that he is ready for trial, without more, will not be construed as an objection to continuance of trial. *People v. Johnson*, 23 Cal. Rptr. 608, 612 (Ct. App. 1962) (Defendant stated he was ready for trial prior to court's issuance of an order for a continuance; court held this was not a proper objection to the court order for a continuance, made after the statement, with defendant and counsel silent).

[19] Courts will not imply consent of a defendant from the acquiescence or failure of defense counsel to object, where the interests of counsel and defendant have diverged, due to the defense counsel's own calendar conflict. *See, e.g., People v. Johnson,* 606 P.2d 738, 744 (Cal. 1980) (en banc) (finding that request of counsel for three postponements over express objection of defendant did not waive defendant's right to speedy trial under constitution and statute, where appointed counsel sought to resolve calendar conflicts and not to promote the best interests of the client, and where postponements were not granted "at the request of the defendant or with his consent" within the meaning of the statute). Likewise, the Appellate Division, citing to *Johnson*, refused to imply a defendant's consent from his counsel's actions, when counsel's

consent was given to resolve the counsel's own calendar conflict. *Cruz v. People of Terr. of Guam*, DCA No. 88-00035A, 1989 WL 265029 (D. Guam App. Div. 1989).

[20] In *Cruz v. People of Territory of Guam*, the court found there was a "real question" whether a continuance had been entered upon motion of the defendant or with his implied consent within the meaning of section 80.60(b)(1). *Id.* at *3. Defense counsel had made a motion to continue, but defendant, after having substituted counsel, later testified he had protested vigorously against the continuance. *Id.* The court looked to the court minutes, which "shed much light on the subject" although they had not been furnished as part of the record on appeal, but had been obtained independently from the Clerk:

> The minutes show that Cruz's counsel, Cunliffe, made two separate motions for continuance of the trial on two successive days, January 6 and January 7, 1988. The minutes do not indicate that Cruz was present in court on either day, and we must assume he was not. The minutes label both motions as having been made and heard "ex parte".
>
> . . .
>
> If the motion made by Cruz's counsel is found to have been made over Cruz's objections, solely for the convenience of his appointed counsel, and with no benefit to Cruz (and if Cruz had not later pled guilty), this continuance might be deemed grounds for reversal. *People v. Johnson*, 26 Cal. 3d 557, 162 Cal. Rptr. 431 (1980) at n.1.
>
> In *Johnson*, defendant's public defender had twice requested and obtained continuances over the defendant's express objection. He was finally tried 144 days after arraignment. In reversing, the California Supreme Court said "the consent of appointed counsel to a postponement of trial beyond the statutory period, if given solely to resolve a calendar conflict and not to promote the best interest of his client, cannot stand unless supported by the express or implied consent of the client himself." *Id.* at 567, 162 Cal. Rptr. at 437.

Cruz, 1989 WL 265029, at *2-3 (footnote omitted). Thus, the Appellate Division held in *Cruz* that, where no evidence showed that defendant was present at the ex parte hearings in which defense counsel moved to postpone trial, and where the court determined the motion had been

brought to resolve counsel's calendar conflict over the defendant's express objection, the defendant's consent would not be implied from defense counsel's motions for continuance. *Id.*

[21] Similarly, the Ninth Circuit considered whether consent of counsel to a postponement due to the counsel's own calendar conflict was effective to exclude a period of time from the speedy trial statute under 8 GCA § 80.60(b)(1) in *People of Territory of Guam v. Ibanez*, 1993 WL 164764 (9th Cir. 1993). In finding that counsel's waiver was ineffective without the "express or implied consent" of the client, the *Ibanez* court acknowledged that a defendant's consent need not always be express, but may be implied.[3] *Id.* at *4. The court relied on *People v. Johnson*, 606 P.2d (Cal. 1980), in which the Supreme Court of California interpreted an exclusionary provision essentially identical to 8 GCA § 80.60(b)(1), stating:

> That court held that "the consent of appointed counsel to a postponement of trial beyond the statutory period, if given solely to resolve a calendar conflict and not to promote the best interests of his client, cannot stand unless supported by the express or implied consent of the client himself." *Id.* In the present case, Mr. Phillips indicated he wished to postpone the trial because he was "not free" until November 8th. This reason is a "calendar conflict" within the meaning of *Johnson.* Thus, Mr. Phillips' waiver is ineffective unless Ibanez expressly or impliedly consented to it.

Ibanez, 1993 WL 164764, at *4.

[22] In light of the foregoing authority, we turn to the case cited by Quinata at oral argument, *People v. Mendiola*, 1999 Guam 8. Quinata contends that *Mendiola* binds this court to hold that Guam has broken from the California precedent relied upon above, by finding the speedy trial right to be a fundamental one that only the defendant may waive, and consequently in Guam the

[3] In *People of Territory of Guam v. Munoz,* No. CR-94-00100A, 1995 WL 604346 (D. Guam App. Div. 1995), the Appellate Division analyzed whether a continuance due to counsel's calendar conflict was "good cause" for delay under section 80.60(b)(3), but did not analyze directly whether defendant's consent was express or implied under section 80.60(b)(1), because in that case, defendant had expressly objected.

defendant's waiver must be express and may not be implied. Quinata cites to the following excerpt of the *Mendiola* opinion:

> Given the fundamental nature of the right to speedy trial, only the defendant, himself, and not his counsel, may waive this right. *People v. Johnson*, 26 Cal. 3d 577, 162 Cal. Rptr. 431, 606 P.2d 738 (1980). Such a waiver must be voluntary, knowing, and intelligent. *Id.; see also Curlee Townsend v. Superior Court of Los Angeles County*, 15 Cal. 3d 774, 781 543 P.2d 619 (1975). In the instant case, there is no record of the defendant himself waiving or asserting the right to speedy trial specifically to allow the ten day extension period to take effect.

Mendiola, 1999 Guam 8 ¶ 31.

[23] We decline to construe *People v. Mendiola* in the matter invited by Quinata. First, *Mendiola's* holding did not concern an alleged statutory speedy trial violation, but instead, ruled on a Sixth Amendment speedy trial claim. *Id.* ¶¶ 1, 29; *see also Id.* ¶ 26, n.5 (stating that the analysis rested "exclusively" on Constitutional grounds). In deciding the Constitutional question, the court applied the four factors set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972). We held that a four and one-half year delay in bringing a defendant to trial, though long, was counter-balanced by the defendant's inability to prove actual prejudice coupled with the justifiable reasons for the delay. *Mendiola*, 1999 Guam 8 ¶ 35.

[24] The excerpt cited by Quinata was part of the court's application of the third *Barker* factor, which involved a determination of whether the defendant had consistently asserted his right to speedy trial. *Id.* ¶ 29. In looking to whether defendant had consistently asserted his speedy trial right, we observed that the defendant had not expressly or impliedly consented under 8 GCA § 80.60(b)(1) to one of the postponements, because "[f]rom the record it is clear that defendant denied this consent explicitly in his motion to reconsider the trial date." *Id.* ¶ 30. If there is a holding from *Mendiola* with respect to 8 GCA § 80.60(b)(1), it is that a defendant's

consent to a postponement will not be implied when the defendant has expressly denied his consent by filing a motion to reconsider the trial date.

[25] Taken out of context, one can see how a party might construe the *dicta* in paragraph 31 as establishing a requirement that the defendant's consent to a postponement must always be expressly granted by the defendant personally, rather than through counsel. We clarify here that such a rule is not the law on Guam. First, the statements in *Mendiola* about Guam's speedy trial statute were not essential to the court's holding, which construed only the Sixth Amendment right. Second, in discussing the "fundamental nature of the right to speedy trial," our court did not break with California precedent, but in fact, relied on California precedent. If *Mendiola* intended to break with this line of cases, it would have stated it was doing so, rather than citing to the California case law of *People v. Johnson*, 606 P.2d, and *Curlee Townsend v. Super. Ct.*, 543 P.2d 619 (Cal. 1975). Thus, *Mendiola*'s statement, citing to *Johnson*, that "only the defendant, himself, and not his counsel, may waive this right," must be read consistently with the *Johnson* case.

[26] In *People v. Johnson,* the California Supreme Court stated the rule that the California counterpart to our speedy trial statute, section 1382, "permits a postponement 'at the request of the defendant or with his consent, express or implied . . . .' Under this language, the failure of defendant or his counsel to make timely objection to a postponement constitutes implied consent to the postponement." *Johnson*, 606 P.2d at 744 n.7. The *Johnson* court also discussed the federal constitutional right to a speedy trial:

> The federal constitutional right to a speedy trial, as explained in *Barker v. Wingo* (1972) 407 U.S. 514, 92 S. Ct. 2182, 33 L.Ed.2d 101, is a fundamental right, which can be waived only through a voluntary, knowing, and intelligent decision by the defendant himself. (*See* 407 U.S. at pp. 525-526, 92 S. Ct. at pp. 2189.) Defendant Johnson, however, does not contend that the 144-day delay in the

> present case infringed his right to a speedy trial under the federal Constitution, and a comparison of the present case with *Barker v. Wingo*, supra, and the cases there cited indicates that the delay in the case at bar was not sufficient to abridge defendant's rights under the federal Constitution.

Id. at 744 n.6.

[27] Thus, *Johnson* contemplated both a constitutional right, the waiver of which must be voluntary, knowing, and intelligent and could only be made by the defendant personally, and a statutory right, for which the defendant's consent could be implied. The quoted language in *Mendiola* may have conflated these two separate discussions. Ultimately, the *Johnson* case held that under the circumstances, defense counsel's request for three postponements over express objection of defendant did not waive defendant's right to speedy trial, where appointed counsel sought to resolve calendar conflicts and not to promote best interest of client. *Id.* at 744. The holding did not rely on a finding that the defendant must expressly consent to a postponement.

[28] In the other case cited in *Mendiola*, *Townsend v. Super. Ct.*, 543 P.2d at 624, the California Supreme Court held that because section 1382 was enacted to supplement and define the constitutional right to a speedy trial, the statutory right to be tried within sixty days was *not* of a fundamental character and thus could ordinarily be waived by counsel. *Id.* at 623-27; *see also People v. Johnson*, 606 P.2d at n.6 (stating "we need not reconsider *Townsend*'s holding that a defendant's rights under section 1382 . . . are *not* of fundamental character." (citations omitted, emphasis added)). In fact, in *Townsend,* the court expressly stated "[w]e have concluded, subject to certain limitations, that consent of counsel alone without that of the client, satisfies section 1382, subdivision 2." *Id.* at 624. *Townsend* was subsequently limited by other California decisions. *See Bryant v. Super. Ct.*, 230 Cal. Rptr. 777, 779-82 (Ct. App. 1986). We discuss it here not to reflexively adopt its analysis, but merely to demonstrate that it cannot stand

for Mr. Quinata's proposition that the statutory speedy trial right must be expressly waived by the defendant personally.

[29] The California cases cited in *Mendiola* do not stand for the proposition that only the defendant personally may expressly consent to postponement of trial beyond the statutory period. Most importantly, this court, in interpreting the statutory right to speedy trial, must give meaning to the statutory provision which allows defendant's consent to a postponement to be either express or implied. As discussed above, a long line of cases, including those from California, Guam's Appellate Division, and the Ninth Circuit, has countenanced the fact that a defendant's consent may be implied from the counsel's consent, and another line of cases has articulated situations in which it would be inappropriate for a court to imply the defendant's consent.

[30] This jurisdiction adopts the rule that a defendant's consent to a postponement may be implied by the failure of defense counsel or defendant to object at the time the trial is postponed outside the statutory period. Applying the aforementioned rule to the facts on hand, we find that, when the court notified defense counsel in Quinata's presence that, due to another asserted trial, his pretrial conference would be postponed until the following week, and defense counsel failed to object to the postponement, Quinata was deemed to have consented to the postponement.

B. Applying the ten-day grace period established by 8 GCA § 80.60(b)(1)

[31] When the court continued Quinata's case beyond the statutory period to "early [the following] week, Monday or Tuesday" without objection, Quinata's consent was implied. However, the case was not called back until the following Friday, November 13, 2009, and Quinata had no opportunity to lodge an objection at a hearing on Tuesday, since the case was not called. We observe that, ordinarily, defense counsel might seek to appear ex parte to request a trial date, or could submit a written objection or motion to re-set the trial date. Nonetheless, for

purposes of determining this petition, we will presume that Tuesday, November 10, 2009 was the last day to which defendant in any way consented. This invoked the 10-day grace period of 8 GCA § 80.60(b)(1), requiring trial to start within ten days of Tuesday, November 10th. *See, e.g., People v. Malone*, 237 Cal. Rptr. 794, 798 (Ct. App. 1987).

[32] Section 80.60(b)(1) provides that a case shall not be dismissed for speedy trial violation, where the action is set on a date beyond the prescribed period upon motion of the defendant or with his consent, express or implied, *and he is brought to trial on the date so set or within ten (10) days thereafter.* 8 GCA 80.60(b)(1) (2005) (emphasis added). Under our statute, the 10-day grace period becomes operative once the defendant has consented, expressly or impliedly, to a trial date beyond the basic 60-day [or 45-day] limit. When the defendant objects to any further continuance, the critical 10-day period begins to run. *See People v. Malone*, 237 Cal. Rptr. 794, 798 (Ct. App. 1987).[4]

[33] Three days of the ten-day period had elapsed when the case was called again on Friday, November 13, 2009. On that date, the court informed Quinata that the trial would be scheduled for December 22nd. Defense counsel again acquiesced, and consequently Quinata's consent to trial on December 22nd, or within ten days of the extended date, was implied.

[34] Quinata's implied consent was effectively revoked less than one week later, on November 19, 2009, when Quinata filed a motion to dismiss for speedy trial violation. Had Quinata on that date instead filed an objection to the trial date or a motion for a new trial date, a new 10-day grace period would have commenced, and the court would have been responsible for

[4] Normally, a statement by a defendant that he is ready for trial, without more, will not be construed as an objection to the continuance of the trial. *People v. Johnson*, 23 Cal. Rptr. 608, 612 (Ct. App. 1962). However, where, due to defense counsel's own calendar conflict, a defendant has already expressly consented to trailing another trial, rather than to a specific postponed trial date, the 10-day grace period may be triggered by counsel's announcement of "ready for trial." *See People v. Super. Ct. (Alexander)*, 37 Cal. Rptr. 2d 729, 737-38 (Ct. App. 1995). This announcement gives the People and the Court ten days to bring the matter to trial. *Id.*

bringing Quinata to trial within ten days, absent a showing of good cause.[5] However, Quinata filed a dispositive motion, seeking dismissal on statutory speedy trial grounds. This tolled the speedy trial clock for the time period during which the court worked diligently to resolve the motion. *See Nicholson v. Super. Ct. (People)*, 2007 Guam 9 ¶ 26 ("Generally a defendant must accept some reasonable delay as a consequence of filing a motion, but unreasonable delay does not toll the statute.")

C. Good cause under 8 GCA § 80.60(b)(3)

[35] Here, the Superior Court heard Quinata's motion to dismiss on November 27, 2009, within eight days of its filing. The motion to dismiss was denied twenty-five days later, on December 22, 2009. The court took in total thirty-three days to rule on the motion. The filing of the motion to dismiss tolled the speedy trial clock for the time period during which the court with promptness and diligence considered the motion. *Compare Carver v. Super. Ct. (People)*, 1998 Guam 23 ¶¶ 15-16 (good cause shown where motion filed for defendant's benefit was heard and resolved within nine days) *and People v. Ibanez*, DCA No. 91-0001A, 1992 WL 97221, at *2-3 (D. Guam App. Div. 1992) (good cause shown where motion to disqualify was decided fourteen days later and motion to dismiss was decided thirty-two days later) (*aff'd*, 1993 WL 164764 (9th Cir. 1993)) *with Nicholson*, 2007 Guam 9 ¶ 28 (no good cause shown where delay in deciding motion to dismiss was for a period of nine months and record failed to reflect a showing by the trial court that it was diligent in working towards a prompt disposition of the motion during this time).

[5] "Reviewing courts routinely examine the record for the last date to which the defendant consented for the purpose of initiating the 10-day period. . . ." *Barsamyan v. App. Div. of Super. Ct. of Los Angeles County*, 189 P.3d 271, 276 (Cal. 2008).

[36] In our jurisdiction, whether there is good cause for delay depends on the facts and the circumstances of each case, and there is no bright-line rule for how much time a court may reasonably take to consider a motion. *See Nicholson*, 2007 Guam 9 at ¶13. This contrasts with the Federal Speedy Trial Act, which excludes from the speedy trial calculation periods of delay "reasonably attributable" to a period of time in which the court has taken a matter under advisement, but sets a 30-day outer limit for such time. 18 U.S.C.A. § 3161(h)(1)(H), current through P.L. 111-164 (excluding P.L. 111-148, 111-152, 111-159, and 111-163). Although Guam law does not impose a hard-and-fast 30-day limit for disposing of a motion, we have cautioned that the record should reflect a showing by the trial court that it was diligent in the prompt disposition of the motion. *Nicholson*, 2007 Guam 9 ¶ 25. Relevant circumstances in determining good cause for delay certainly include the particular interest in the prompt disposition of a pre-trial motion alleging a speedy trial violation.

[37] Here, the trial court heard the motion on November 27, 2009, within eight days of its filing. The motion to dismiss was denied twenty-five days later, on December 22, 2009. The court took in total thirty-three days to rule on the motion, one day longer than the time period upheld as reasonable in *Ibanez*. We find that the delay caused by the court's consideration of the motion to dismiss was excusable under the "good cause" exception of 8 GCA § 80.60(b)(3). However, we reiterate our holding from *Nicholson*, that good cause for the delay must be apparent from the face of the record. *Nicholson*, 2007 Guam 9 ¶ 28. Where a court takes longer than thirty-three days to rule on a pre-trial motion to dismiss alleging a speedy trial violation, it may wish to assist this court's review by including in the Decision and Order a statement explaining why such a period of time was reasonable.

V. CONCLUSION

[38] Quinata's consent to the court's continuance was implied from his counsel's failure to object, in Quinata's presence, to the court's continuance of the trial date. Furthermore, the court had good cause for delay during the time in which Quinata's motion to dismiss was under advisement. Consequently, Quinata has failed to demonstrate a violation of his statutory speedy trial right, and it is unnecessary to reach the question of whether the court's preoccupation with another trial, without more, was in itself good cause for delay. The Petition for a Writ of Mandate is hereby **DENIED**.

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