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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM

Plaintiff-Appellee,

v.

HAIM HABIB

Defendant-Appellant.

Supreme Court Case No. CRA09-013

Superior Court Case No. CF0512-03

OPINION

Cite as: 2010 Guam 9

Appeal from the Superior Court of Guam

Argued and submitted on May 3, 2010

Hagåtña, Guam

Appearing for the Plaintiff-Appellee:

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

CARBULLIDO, J.:

[1] This appeal involves the trial court’s post-judgment order dismissing Defendant-Appellant Haim Habib’s Amended Motion to Set Aside the Judgment on jurisdictional grounds. In the motion, Habib claimed the trial court violated his procedural and substantive rights in the judgment, which did not conform to his plea agreement. He contends that the judgment not only increased his sentence from a single seven-year sentence to two seven-year sentences, to run concurrently, but that it referred to his plea as a *nolo contendere* plea rather than an *Alford* plea, which Habib claims was the plea actually accepted and entered by the trial court. Habib now asks this court to vacate the trial court’s post-judgment order dismissing his Amended Motion to Set Aside the Judgment, to vacate the judgment and to allow the withdrawal of his plea.

[2] We find that the trial court erred in declining to hear Habib’s Amended Motion to Set Aside the Judgment on jurisdictional grounds. Therefore, the trial court’s dismissal of Habib’s Amended Motion to Set Aside the Judgment is reversed, and the matter is remanded for the trial court to consider said motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] On February 22, 2005, the trial court held a Change of Plea Hearing pursuant to a plea agreement made between the People of Guam (“the People”) and Defendant-Appellant Haim Habib. Transcripts (“Tr.”), tab 1, at 1-2 (Change of Plea, Feb. 22, 2005). At this hearing, the court explained the difference between a *nolo contendere* plea and an *Alford* plea. The court said that in a *nolo contendere* plea, the defendant does not contest the facts, but in an *Alford* plea, the

People have to make some factual determinations. Habib's counsel stated that it is Habib's intent to go forward with an *Alford* plea because Habib concedes that the People have sufficient evidence to convict him but continues to believe and assert that he did not commit the crime. The court then stated that it would ask the People to establish the factual basis, and if the factual basis is satisfied, then the court will go ahead pursuant to the *Alford* plea.

[4] After the court's examination of Habib, the court asked him if he understood the terms of the plea agreement, that the plea agreement is merely a recommendation to the court, and that the court is not bound by the plea negotiations, but can reject the terms and give Habib the opportunity to withdraw his plea. Habib answered that he understood this. The court then informed Habib that under the law, the charge of First Degree Criminal Sexual Conduct as a first degree felony carried a minimum sentence of fifteen years imprisonment and a maximum sentence of life imprisonment without the possibility of parole plus a fine. Further, the charge of Third Degree Criminal Sexual Conduct as a second degree felony carried a minimum sentence of one year imprisonment and a maximum sentence of eight years imprisonment plus a fine. Habib responded that the range is correct under the law, but that it is not the range that is contemplated in his plea agreement. The court then asked the People to make a factual basis for entering into an *Alford* plea. After the People's factual basis was asserted, the court accepted Habib's *Alford* plea.

[5] On August 29, 2005, the trial court held a Sentencing Hearing, where the court stated that Habib "has entered an Alford plea" and that the court "has accepted that plea agreement." Tr., tab 2, at 89 (Sentencing, Aug. 29, 2005). Further, the court stated it has "entered into the Alford plea and . . . believe[s] both parties are aware that there is a range before the Court and it's a

binding range. It is this Court's opinion that it can't deviate from the range and so its pronouncement is anywhere from three, maximum of ten years, under the Alford plea." *Id.* at 90. Taking into consideration all of the mitigating and aggravating circumstances, the court sentenced Habib to "seven years imprisonment at the Department of Corrections." *Id.* at 106. The court went on to describe the other details in the plea agreement. After explaining Habib's sentence in detail, the court asked counsel for Habib and counsel for the People if those were the entire conditions that both agreed upon. As far as the transcripts show, both counsels agreed. The court then stated it "hereby incorporates into reference the Alford plea agreement entered into by the Defendant." *Id.* at 110.

[6] On October 14, 2005, the trial court executed a written judgment against Habib, stating that it accepted the plea from Habib, who changed his plea of "not guilty" to that of "*nolo contendere*" as to the First Charge of First Degree Criminal Sexual Conduct (as a first degree felony) in violation of 9 GCA §§ 25.15(a)(1) and (b) and the Third Charge of Third Degree Criminal Sexual Conduct (as a second degree felony) in violation of 9 GCA §§ 25.25(a)(1) and (b). Appellant's Excerpts of Record ("ER") at 31-32 (J., Oct. 14, 2005). Pursuant to the plea agreement, the court dismissed all other charges against Habib. Habib was then sentenced to, among other things, "seven (7) years imprisonment for each charge . . . to run concurrently." *Id.* at 32.

[7] On July 20, 2009, while serving his sentence, Habib filed a Motion to Set Aside Judgment because of deficiencies regarding his plea and sentencing proceedings. Habib later filed an Amended Motion to Set Aside the Judgment ("Motion"). In response, the trial court issued an order dismissing Habib's Motion, stating that "absent further information, the Court

will not speculate as to whether it has the jurisdiction necessary to entertain a motion to set aside a criminal judgment after appellate remedies are exhausted.” ER at 37 (Dec. & Order, Aug. 25, 2009). Further, the court stated that if Habib believed his judgment is void based on an illegal plea agreement and sentence, he should exercise his right to prosecute a writ of habeas corpus, pursuant to 8 GCA Chapter 135. On September 9, 2009, Habib filed a Notice of Appeal, *pro se*.

II. JURISDICTION

[8] The trial court had jurisdiction over this matter because it has original jurisdiction over all causes of action not within the exclusive jurisdiction of the Supreme Court of Guam and the U.S. District Court of Guam. 7 GCA §§ 4101(a) and 3105 (2005).

[9] The Supreme Court has appellate jurisdiction over this matter under 8 GCA § 130.15(c) because a defendant in a criminal case has the right to appeal any order made after judgment that affects the defendant’s substantial rights. 8 GCA § 130.15(c) (2005). Further, the Supreme Court has appellate jurisdiction over this case pursuant to 7 GCA §§ 3107 and 3108 (2005).

III. STANDARD OF REVIEW

[10] The issue on appeal is whether the trial court properly dismissed Habib’s Amended Motion to Set Aside the Judgment. A dismissal of a motion to set aside the judgment is reviewed for abuse of discretion. *See Davis v. Carter*, No. 06-3467, 2007 WL 2874019, at *1 (8th Cir. Oct. 4, 2007) (citing *Middleton v. McDonald*, 388 F.3d 614, 616 (8th Cir. 2004)).¹

¹ The People claim that because the trial court stated no other reason for dismissal of Habib’s Motion, the issue on appeal concerns the trial court’s jurisdiction over the Amended Motion to Set Aside Judgment. Issues of jurisdiction are reviewed *de novo*. *People v. Aguirre*, 2004 Guam 21 ¶ 26 (citing *People v. Quichocho*, 1997 Guam 13 ¶ 3).

Habib states that the standard of review for denial of a motion to withdraw a guilty plea is abuse of discretion. Habib also claims that the standard of review is plain error because the errors in the judgment were not brought to the attention of the trial court.

IV. DISCUSSION

[11] Habib alleges that the trial court merely looked at the title of his Motion and dismissed it on the sole ground that judgment was entered against him and the court would not “speculate as to whether it has the jurisdiction necessary to entertain a motion to set aside a criminal judgment after appellate remedies are exhausted.” Appellant’s Brief (“Appellant’s Br.”) at 8-9 (Mar. 5, 2010); ER at 37 (Dec. & Order). Habib claims this was error.² Habib and the People agree that the court should have heard the Motion, but disagree as to why.

[12] In Habib’s Motion, he argued that the judgment is invalid because he was never given the opportunity to withdraw his plea once the court clearly did not accept the terms of the plea agreement. According to the terms of the plea agreement, if the court decided to reject the plea provisions regarding sentencing, it must give the People and Habib an opportunity to withdraw from the agreement. Thus, Habib claims judgment should be set aside and he should be allowed to withdraw his plea. Further, Habib argued in his Motion that 8 GCA § 60.80(d) requires the court to communicate to the defendant in open court the fact that it rejected the plea agreement, clearly advise him that if he persists in his plea the disposition of the case may be less favorable than that contemplated by the plea agreement, and allow the defendant to withdraw his plea. 8 GCA § 60.80(d) (2005). Therefore, Habib claims that by not following the procedures in section 60.80(d), the court erred.

However, the real issue on appeal is whether the trial court properly dismissed Habib’s Amended Motion to Set Aside the Judgment, which is reviewed for abuse of discretion.

² On appeal, Habib argues that the trial court erred because it abused its discretion when it dismissed his Motion and also because it made a plain error by increasing Habib’s sentence from what his plea agreement stated without giving Habib the opportunity to withdraw his plea, thus violating his substantial rights.

[13] Habib argued in his Motion, and now on appeal, that his Motion was a proper remedy under 8 GCA § 120.42 because he suffered manifest injustice due to the non-conforming judgment. The judgment states that Habib entered into a *nolo contendere* plea and received two seven-year sentences to run concurrently, but the transcripts from Habib's Change of Plea Hearing and Sentencing Hearing both show the court accepted his *Alford* plea and sentenced him to a seven-year sentence, without mentioning two seven-year sentences to run concurrently. Title 8 GCA § 120.42 states the following:

A motion to withdraw a plea of guilty or *nolo contendere* may be made only before sentence is imposed or imposition of sentence is suspended; *but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea.*

8 GCA § 120.42 (2005) (emphasis added).³ Thus, under section 120.42, the trial court had the jurisdiction to hear Habib's Motion in order to determine whether in order to correct manifest injustice, it should vacate its judgment and allow Habib to withdraw his plea.

[14] The People agree that the trial court had the jurisdiction to decide Habib's Motion. However, the People differ by arguing that under 8 GCA §§ 120.46 and 120.50, the court has the power to correct an illegal sentence and clerical errors at any time. Title 8 GCA § 120.46 states the following:

The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

8 GCA § 120.46 (2005) (emphasis added). Title 8 GCA § 120.50 states the following:

³ The language of 8 GCA § 120.42 is identical to former Federal Rule of Civil Procedure (FRCP) 32(d), which was amended in 1983 and renumbered as FRCP 11(d). See *People v. Tedaotao*, No. CR 96-00013A, 1996 WL 875739, at *3, n.6 (D. Guam App. Div. Sept. 30, 1996).

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). Therefore, the People present two alternative statutory theories as to why the trial court did have jurisdiction to hear Habib's Motion. The People argue that because the trial court erred in refusing to hear Habib's Motion, the appropriate remedy in this situation is not to vacate the judgment, but to consider the merits of Habib's Motion alleging that an illegal sentence was imposed.

[15] Clear statutory authority exists to support the proposition that the trial court did, in fact, have jurisdiction to hear Habib's Motion. Title 8 GCA §§ 120.42, 120.46, and 120.50 each grant jurisdiction to the trial court to hear Habib's Motion for different reasons. Title 8 GCA § 120.42 gives the court authority to set aside the judgment of conviction and permit the defendant to withdraw his plea in order to correct manifest injustice. 8 GCA § 120.42 (2005). Title 8 GCA § 120.46 allows the court to correct an illegal sentence at any time. 8 GCA § 120.46 (2005). Title 8 GCA § 120.50 allows the court to correct clerical mistakes in judgments. 8 GCA § 120.50 (2005). Because of the existence of statutory authority granting the trial court jurisdiction to hear Habib's argument, whether it is to set aside the judgment of conviction, to correct an illegal sentence, or to correct a clerical mistake, the trial court erred in dismissing Habib's Motion without hearing the merits of his argument.

[16] Habib further argues that the trial court should have granted his Motion and allowed him to withdraw his plea in order to correct manifest injustice. Specifically, Habib claims that by showing the judgment is non-conforming to his plea agreement, which was accepted and entered by the trial court, he has suffered a manifest injustice because he did not receive the benefit of

his bargain. Moreover, Habib argues that such defects, or plain errors, in the judgment affect his substantial rights, thereby warranting the judgment to be set aside and his plea withdrawn.

[17] In response, the People argue that Habib does not explain how this mistake in the judgment has affected the course of his prosecution or created manifest injustice. Furthermore, the People claim that the real issue here is simply a clerical error, admitting that the judgment prepared by the prosecutor for the trial court's signature contains a scrivener's error indicating two seven-year sentences. The People argue that the trial court can simply fix the clerical error by issuing a new judgment *nunc pro tunc* to reflect the trial court's intent.

[18] However, because we find that the trial court erred in dismissing Habib's Motion, we need not address the merits of the remaining arguments brought up on appeal. Instead, we remand the case to the trial court to consider Habib's Amended Motion to Set Aside the Judgment.

V. CONCLUSION

[19] We find that the trial court erred in dismissing Habib's Amended Motion to Set Aside the Judgment on jurisdictional grounds because the trial court has jurisdiction to hear Habib's Motion. Therefore, the trial court's dismissal is **REVERSED** and the matter is **REMANDED** to the trial court to consider Habib's Amended Motion to Set Aside the Judgment.

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

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

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