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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM
Plaintiff-Appellant,

v.

MARIO H. JULIAN
Defendant-Appellee.

THE PEOPLE OF GUAM
Plaintiff-Appellant,

v.

LEVITA OCAMPO SALVADOR,
Defendant-Appellee.

Supreme Court Case Nos. CRA12-003 and CRA12-004 (consolidated)
Superior Court Case Nos. CM636-11 and CM505-11

OPINION

Cite as: 2012 Guam 26

Appeal from the Superior Court of Guam
Argued and submitted July 11, 2012
Dededo, Guam

ORIGINAL

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

MARAMAN, J.:

[1] Plaintiff-Appellant People of Guam appeal the trial court’s dismissals without prejudice for failure to promptly arraign Defendants-Appellees Mario H. Julian and Levita Ocampo Salvador pursuant to Title 8 Guam Code Annotated (“GCA”) § 60.10 and this court’s ruling in *People v. Rasauo* (“*Rasauo I*”). See 8 GCA § 60.10 (2005); *People v. Rasauo*, 2011 Guam 14. On appeal, the People argue that the trial court erred in finding that the delay resulting from both (1) the generation, issuance, and calendaring of the Summons for arraignment, and (2) any action (or inaction) by the Superior Court Marshals Unit to serve the summons on Julian and Salvador should not be considered as excused for “good cause” under the language of *Rasauo II*, and therefore that such delay was ground for dismissal. The People contend that the “good cause” analysis under 8 GCA § 60.10(a) should not be equivalent to the same “good cause” analysis for a statutory speedy trial claim. For the reasons discussed below, we affirm the dismissals.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] Both cases were consolidated on appeal, however, we discuss the facts of each case separately below.

Mario Julian, CRA12-003

[3] On May 26, 2011, a complaint was filed charging Defendant-Appellee Mario Julian with assault (as a misdemeanor).¹ The case was assigned on June 2, 2011 and thereafter on June 8, 2011 a Summons, which was received by the court on May 26, 2011 was filed and a hearing was

¹ The alleged incident occurred on or about May 1, 2011.

set for July 13, 2011. The marshal's office also received the summons for service on June 8, 2011. Two days before the July 13 hearing, the marshal filed an affidavit of non-service stating that the marshal was unable to serve Julian in time for the hearing. At the hearing, the Magistrate Judge filed a declaration and recommendation to the Presiding Judge requesting that a summons be re-issued and a new hearing date be set. A second summons was issued on July 19, 2011 with a new hearing date of August 31, 2011.² A marshal served Julian with the second summons on August 29, 2011 but Julian failed to appear at the August 31 hearing.³ As a result, the trial court issued a bench warrant, which was executed on September 1, 2011.⁴ The court issued a release from confinement that same day and Julian was ordered to return to court on September 7, 2011 for an arraignment. At the hearing, Julian was appointed counsel and the arraignment was continued to September 28, 2011. From the time the complaint was filed on May 26, 2011 until the date of continued arraignment on September 28, 2011, 125 days elapsed.

[4] On September 9, 2011 this court issued its opinion in *Rasauo II*, establishing a rule that a defendant should be promptly arraigned within sixty days of the filing of a complaint unless good cause is shown. *See Rasauo II*, 2011 Guam 14 ¶ 16. Based on the *Rasauo II* opinion and the rule announced, Julian filed a motion to dismiss for failure to promptly arraign him. The People opposed the motion; after hearing argument on the matter the trial court granted Julian's motion and the case was dismissed without prejudice. The People timely filed this appeal.

² The second summons was dated July 15, 2011 but not filed until July 19. The marshal's division received the summons for service on July 19, 2011.

³ The affidavit of service states that the marshal served Julian with the second summons personally at the court on August 29, 2011. Julian RA, tab 7 at 1 (Aff. of Service, Aug. 29, 2011).

⁴ It is unclear from the record whether Julian self-surrendered or was picked up on September 1, 2011.

Levita Ocampo Salvador, CRA12-004

[5] A complaint charging Defendant-Appellee Levita Ocampo Salvador with retail theft (as a misdemeanor) was received by the Superior Court on April 8, 2011 and assigned Probable Cause number PC#0011-11.⁵ The complaint was later filed on April 22, 2011. On April 19, 2011, the trial judge signed the summons setting a hearing for June 29, 2011, however the summons was not filed until May 31, 2011. An amended complaint was later filed on June 14, 2011 but no summons on the amended complaint was issued. The marshal's office received the summons for service on June 1, 2011. Two days before the scheduled hearing, the marshal filed an affidavit of non-service indicating that after three attempts the marshal was unable to locate Salvador. At the June 29 hearing, the Magistrate Judge filed a declaration and recommendation that a bench warrant issue because the marshal made reasonable and diligent attempts to personally serve Salvador. The next day, a bench warrant was issued. On August 31, 2011 Salvador came to court in response to the date on the Notice to Appear ("NTA") she previously received. Salvador was taken into custody and an order for conditional release was issued ordering Salvador to return to court on September 28, 2011. Salvador was also appointed counsel and the arraignment was continued to September 28, 2011. From the time the complaint was filed on April 22, 2011 until the date of continued arraignment on September 28, 2011, 159 days elapsed.

[6] Salvador filed a motion to dismiss for failure to promptly arraign as a result of this court's holding in *Rasauo II*. The trial court granted Salvador's motion and the case was dismissed without prejudice. The People timely filed this appeal.

⁵ The alleged incident occurred on or about September 14, 2010. Salvador RA, tab 1 at 1 (Compl., Apr. 22, 2011).

II. JURISDICTION

[7] We have jurisdiction to hear the People’s appeal from an order dismissing a criminal case pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw current through Pub. L. 112-207 (2012)); 7 GCA § 3107(a) (2005); and 8 GCA § 130.20(a)(5) (2005). Specifically, section 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).

III. STANDARD OF REVIEW

[8] We review a decision and order on a motion to dismiss a complaint alleging a violation of prompt arraignment for an abuse of discretion. *Rasauo II*, 2011 Guam 14 ¶ 5. Issues which are purely legal issues are reviewed *de novo*. *People v. Rios*, 2008 Guam 22 ¶ 8.

IV. ANALYSIS

[9] The People argue that the trial court erred in dismissing the complaints in these cases after finding that no good cause existed for the delay to promptly arraign Julian and Salvador pursuant to 8 GCA § 60.10(a) and the rule announced in *Rasauo II*: Specifically, the People assert that: (1) the alleged delays were the result of circumstances beyond the control of the People; (2) the delay in the prompt arraignment context is not equivalent to delay in the speedy trial context; and (3) the dismissal in these cases impairs the People’s prosecutorial function without providing any corrective mechanism. Appellant’s Br. at 11, 16, and 21 (Apr. 26, 2012). Before addressing these issues, we must initially review whether *Rasauo II* should be applied retroactively.

A. Retroactive Application of *Rasauo II*

[10] The alleged delay in both cases occurred prior to the issuance of the *Rasauo II* opinion, which set out the sixty day time period for prompt arraignment. In Julian, the complaint was

filed on May 26, 2011 and the arraignment was held on September 28, 2011. Julian RA, tab 1 at 1 (Compl., May 26, 2011); Julian RA, tab 17 at 1 (Recording Log, Sept. 28, 2011). In Salvador, the complaint was filed on April 22, 2011 and an arraignment was held on September 28, 2011. Salvador RA, tab 1 at 1 (Compl., Apr. 22, 2011); Salvador RA, tab 13 at 1 (Recording Log, Sept. 28, 2011). *Rasauo II* was decided on September 9, 2011. *Rasauo II*, 2011 Guam 14.

[11] Recently, in *People v. Felder*, relying on United States Supreme Court precedent, we held that a “new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases . . . pending on direct review or not yet final [when the new rule was decided], with no exception for cases in which the new rule constitutes a ‘clear break’ with the past.” 2012 Guam 8 ¶ 20 (quoting *Griffith v. Ky.*, 479 U.S. 314, 328 (1987)). Because a judgment of conviction had yet to be rendered against the defendant in *Felder* at the time the new rule in the prior cases were decided, we concluded that the defendant’s case was “not yet final” for purposes of *Griffith* retroactivity and retroactively applied the new rule. *Id.* Similarly, the instant cases were “not yet final” when *Rasauo II* was decided because the dismissals had not yet been entered and therefore, we retroactively apply the rule announced in *Rasauo II*. See Julian RA, tab 25 (Dec. & Order, Feb. 18, 2012); Salvador RA, tab 20 (Dec. & Order, Feb. 28, 2012).

B. Whether the Good Cause Standard for Delay Under the Statutory Speedy Trial Context is Equivalent to Good Cause Under the Prompt Arraignment Standard

[12] The People argue that while we have previously held that the prompt arraignment right is a statutory expression of the speedy trial right, the prompt arraignment statute should not be treated as equivalent to the statutory speedy trial statute. Appellant’s Br. at 17. To support this claim, the People note there is a distinction between constitutional and statutory speedy trial rights. *Id.* at 18 (citing *Quinata v Super. Ct. of Guam (People)*, 2010 Guam 8 ¶¶ 23-30). Moreover, the People state that “what delays can and cannot be considered excused under certain

speedy trial statutes is commonly a question of the precise language of the particular statute at issue,” which varies in every jurisdiction. *Id.* The People contend that this distinction is further compounded because the prompt arraignment statute diverges both from the constitutional right to speedy trial and from other provisions within Title 8 which set down the statutory speedy trial right. *Id.* at 18-19.

[13] Because the prompt arraignment statute does not include the “good cause” language, the People submit that this court should consider the definition in the prompt arraignment context to be entirely undefined, and not rely on previous cases interpreting the similar good cause standard under Guam’s statutory speedy trial statute as controlling. *Id.* at 19-20.

[14] Julian and Salvador counter that the People have a duty to expedite the prosecution of cases and in these cases the People failed to show due diligence. *See* Appellee’s Br. at 6 (May 25, 2012). Julian and Salvador maintain that when the People decide not to file a complaint with the NTA, a summons or a request for a summons should be filed with the complaint to prevent any delay in the court setting the hearing date for a defendant’s first appearance. Appellee’s Br. at 10. They further argue that the People failed to show that it is the court’s practice to review all complaints when no NTA is filed to determine whether probable cause exists pursuant to 8 GCA § 15.20(a). *Id.* at 11. Instead, Julian and Salvador assert that the complaint should state whether probable cause exists and if the complaint form is correct, a summons will issue. *Id.*

[15] In *Rasauo II*, we first announced a rule which set forth a time period within which a defendant must be promptly arraigned under 8 GCA § 60.10(a). *See People v. Rasauo*, 2011 Guam 14. Specifically, we said “unless good cause is shown, a complaint shall be dismissed where a defendant is not promptly arraigned within 60 days of the filing of the complaint.” 2011 Guam 14 ¶ 14. The issue of prompt arraignment under 8 GCA § 60.10(a) however was first

addressed in *People v. Stephen*, 2009 Guam 8. In *Stephen*, we said “the prompt arraignment requirement of 8 GCA § 60.10(a) is a statutory expression of the speedy trial right.” *Id.* ¶ 32. We further examined section 60.10(a) in *People v. Rasauo* (“*Rasauo I*”), 2011 Guam 1. We recognized the absence of a statutory time limit for arraignment and the fact that we had not articulated a legal standard for determining the outer bounds of “prompt arraignment.” *Id.* ¶ 52. Moreover, we explained that “in determining whether arraignment has occurred with reasonable speed, a court must consider the specific circumstances of the case.” *Id.* We indicated that the delay in arraignment during which time the speedy trial timelines under 8 GCA § 80.60 had not yet been triggered and that an indigent defendant is still awaiting assignment of public counsel was of particular concern. *Id.* ¶ 53.

[16] In *Rasauo II*, we addressed the reasonable time period for which a defendant must be promptly arraigned under 8 GCA § 60.10(a). *See Rasauo II*, 2011 Guam 14 ¶ 13. Because we previously stated that prompt arraignment was a statutory expression of Guam’s statutory speedy trial statute, we looked to the time period articulated in 8 GCA § 80.60(a). *Id.* (“We infer from the legislature’s establishment of a 45-day or 60-day limit under 8 GCA § 80.60 for the time between arraignment and trial, that the statutory scheme surely contemplates no greater a number of days to govern the outer limit on the time in which the People are expected to achieve the less complex task of conducting an arraignment after a complaint is filed.”).

[17] As a result, we said that under section 60.10(a), sixty days was a reasonable time period to promptly arraign a defendant. *Id.* ¶ 14. In establishing this time period, we recognized that “[t]he public interest in a broad sense, as well as the constitutional guarantee, command prompt disposition of criminal charges.” *Id.* ¶ 12 (quoting *Strunk v. United States*, 412 U.S. 434, 439 n.2 (1973)). This principle, we said is directly embodied in our statutory framework, which states:

The welfare of the people of the territory of Guam requires that all proceedings in criminal cases shall be set for trial and heard and determined at the earliest possible time, and it shall be the duty of all courts and judicial officers and of all prosecuting attorneys to expedite such proceedings to the greatest degree that is consistent with the ends of justice.

Id. (quoting 8 GCA § 80.50(a) (2005)).

[18] Although we announced a procedure for determining whether 8 GCA § 60.10(a) has been complied with, we explained that “compliance with this new standard continues to require a case by case analysis of whether or not the ‘specific circumstances’ of any given case show good cause for delay” in not arraigning a defendant within sixty days from the filing of the complaint. *Id.* ¶ 14 (citation omitted). Our holding in *Rasauo II* was “designed to provide a baseline standard, and not to bind the hands of the trial court in cases where deviation from this baseline is judged to be appropriate.” *Id.* In providing this baseline standard and allowing the trial courts to deviate from the time period where appropriate, we were cognizant of delay that could be caused by both the People and the court, similar to delay in the statutory speedy trial context. We looked to the statutory speedy trial time period in 8 GCA § 80.60(a)(3) because as we explained, “it does not seem logical that a defendant be arraigned over 60 days after the complaint is filed presumably where almost all the evidence in a DUI case is already available, and the speedy trial time period is only 60 days.” *Id.* ¶ 13. As a result, we applied the time period set out in section 80.60(a)(3) to determine whether a defendant is promptly arraigned pursuant to section 60.10(a). *See id.* Whether delay in the speedy trial context is equivalent to delay in prompt arraignment context was not however, addressed in *Rasauo II*. This is the issue urged by the People on appeal. Appellant’s Br. at 16.

[19] As the People correctly point out, a statutory right to a speedy trial is separate and distinct from a constitutional speedy trial. *See State v. Naveira*, 873 So. 2d 300, 308 (Fla. 2004). The

constitutional speedy trial period is measured by tests of reasonableness and prejudice, not a specific number of days, while a speedy trial statute or rule provides for a certain number of days before a defendant must be brought to trial. *Id.* Thus, constitutional standards and analysis have no application when the question is whether the defendant has been denied a statutory speedy trial right, and the speedy trial statute may be violated without proof of the violation of the underlying constitutional guaranty. *See People v. Thomas*, 500 N.E.2d 652, 655 (Ill. App. Ct. 1986). A speedy trial statute or rule is a procedural protection and, except for the right to due process under the statute or rule, does not reach constitutional dimension. *Naveira*, 873 So. 2d at 308 (citation omitted).

[20] An arraignment is the first or preliminary step in the progress of a trial and occurs in the early stages of the proceedings. At arraignment, a defendant is read the charges of the complaint, called to answer the accusation contained in the complaint, and is provided a copy of the complaint before taking a plea. 8 GCA § 60.10(b). Thus, the interests at issue at arraignment are a defendant's right to know of the charges and the right to have adequate information with which to prepare a defense. *State v. Coburn*, 900 P.2d 963, 965 (N.M. Ct. App. 1995). The delays in the processing and service of the summons and scheduling of the arraignments for Julian and Salvador occurred at the early stages of the proceedings.

[21] Under 8 GCA § 80.60, the term good cause is not statutorily defined. *See* 8 GCA § 80.60(b)(3) (2005). Rather, good cause is defined through case law and determined by the facts and circumstances of each case. *People v. Nicholson*, 2007 Guam 9 ¶ 13; *People v. Flores*, 2009 Guam 22 ¶ 32. We have not previously defined good cause in the prompt arraignment context and it is difficult to find truly applicable cases from other jurisdictions because as this court has said, § 60.10 is of unknown origin. *Stephen*, 2009 Guam 8 ¶ 31. Having no case law from

which we can rely on and in considering the principle of prompt disposition of criminal cases, we continue to ascertain good cause for delay beyond the sixty day period by the specific facts and circumstances in each case. Good cause under the statutory speedy trial context has been interpreted through case law and while this law is not controlling, it does provide guidance for purposes of defining good cause under section 60.10(a).

[22] Thus, we find cases which evaluate delay and good cause under the statutory speedy trial context to be instructional in the prompt arraignment setting. In the speedy trial context, court delay is attributable to the People. See *Flores*, 2009 Guam 22 ¶ 32 (citing *People v. Johnson*, 606 P.2d 738, 746-47 (Cal. 1980)). Similarly for purposes of prompt arraignment under 8 GCA § 60.10(a) and *Rasauo II* delay we will attribute the court's delay to the People. We will now address whether there was good cause for the delay in the present cases.

C. Whether Good Cause Exists for the Delay in Arraigning Julian and Salvador

[23] The People argue that the delays in these cases resulted in circumstances beyond the control of the People and therefore should be excluded. We begin our analysis with the delay from the filing of the complaint to the service of the summons.

1. Mario Julian

Whether the Delay from the Filing of the Complaint to the Service of the Summons is Excusable as Good Cause⁶

[24] The first period we address is from the filing of the complaint on May 26, 2011 to the service of the second summons on August 29, 2011, a delay of ninety-five days. After the complaint was filed, a summons was issued thirteen days later with a hearing date of July 13, 2011. At the July 13 hearing, the Magistrate Judge recommended to the Presiding Judge that a

⁶ A recitation of the events from the filing of the complaint to the date of continued arraignment as outlined in Attachment A to this opinion is helpful in determining whether Julian was promptly arraigned.

second summons be issued and a later hearing date be set because a marshal was unable to serve Julian in time for the hearing and no reasonable attempts were made to serve Julian with the summons. In determining if good cause exists the trial court said “it is not clear whether or not Marshals put forth enough effort to locate Defendant or whether or not a good cause excuse existed for the violation of prompt arraignment.” Julian RA, tab 25 at 3 (Dec. & Order).

[25] A second summons was issued and a hearing was set for August 31, 2011. Julian was served with the summons and failed to appear at the August 31 hearing. The trial court concluded that no good cause was shown for this delay because “no attempts were made to serve [Julian] with the second summons or locate . . . [him] until one month beyond the expiration of the 60 day limit.” *Id.* at 4. The court further noted that a bench warrant was issued likely because it was difficult to locate Julian but concluded that, “no documented attempts at normal service were made to bring . . . [Julian] to court.” *Id.* The record reveals however that Julian was served with the second summons on August 29, 2011 and a bench warrant was issued because Julian failed to appear at the hearing on August 31, 2011. Julian RA, tab 7 at 1 (Aff. of Serv., Aug. 29, 2011); Julian RA, tab 10 at 1 (Bench Warrant, Sept. 1, 2011). Most of the delay during this time period resulted from the service of the initial summons and second summons.

[26] In *Rasauo II* we held that a defendant must be arraigned within sixty days from the filing of a complaint unless good cause is shown for the delay. *Rasauo II*, 2011 Guam 14 ¶ 16. Good cause is determined from the facts and circumstances in each case, and is a determination that lies within the discretion of the trial court. *See Flores*, 2009 Guam 22 ¶ 32. In examining the delay on review, the record should reflect the reasons for any delay and whether there was good cause for the delay. *See Nicholson*, 2007 Guam 9 ¶ 25. The trial court determined that no good cause was shown for the delay in the service of the second summons because no attempts were

made to serve Julian. We cannot say that the trial court abused its discretion in concluding that no good cause exists for the failure to timely serve Julian with the summons and to arraign him within sixty days of the filing of the complaint. Although Julian was served with the second summons on August 29, the service was not made within a time period, which permitted his arraignment to occur within sixty days of the filing of the complaint. Since we attribute the court's delay to the People and no good cause was shown, the delay of seventy-six days to serve Julian with a summons is not excluded from the calculation of whether Julian was promptly arraigned within sixty days from the filing of the complaint. Even if we exclude the time period for the trial court's review of the complaint and processing of the summons and the recommendation by the Magistrate Judge to issue a second summons, Julian was not promptly arraigned within sixty days. Because Julian was not arraigned within sixty days from the filing of the complaint, he was not promptly arraigned in accordance with 8 GCA § 60.10(a) and this court's ruling in *Rasuo II*. See 8 GCA § 60.10(a); *Rasuo II*, 2011 Guam 14 ¶ 16.

2. Levita Salvador

Whether the Delay from the Filing of the Complaint to the Initial Hearing is Excusable as Good Cause⁷

[27] We next examine the delay in Salvador's case from the filing of the complaint on April 22, 2011 to the initial hearing on June 29, 2011, a delay of sixty-eight days. After the complaint was filed, a summons was issued on May 31, 2011. Sixty days from the filing of the complaint occurred on June 21, 2011, however the trial court set the hearing date for June 29, 2011, which was more than sixty days from the filing of the complaint. Two days before the hearing, the marshal filed an affidavit of non-service indicating that three attempts were made to serve

⁷ A recitation of the events from the filing of the complaint to the date of continued arraignment as outlined in Attachment B to this opinion is helpful in determining whether Salvador was promptly arraigned.

Salvador with the summons. Salvador RA, tab 5 at 1 (Aff. of Non-Service, June 27, 2011). The trial court determined that dismissal was warranted because the arraignment date was scheduled beyond the sixty day time period and as a result “there was never an opportunity for [Salvador’s] arraignment to comply with *Rasauo II*.” Salvador RA, tab 20 at 3 (Dec. & Order). In determining that Salvador was not promptly arraigned, the court stated that “[n]ormally it would be judicious to discuss the efforts put forth to locate the defendant . . . [but] the issue is irrelevant as even a diligent effort by the Marshals, which the Court finds in this case, would not negate the fact that [Salvador] was scheduled to be arraigned beyond 60 days from the filing of the criminal complaint” *Id.*

[28] We find that the trial court erred in concluding that Salvador was not promptly arraigned simply because the initial appearance hearing was set past sixty days. *See id.* at 4. The scheduling of the hearing past sixty days does not automatically violate prompt arraignment under 8 GCA § 60.10(a) and this court’s holding in *Rasauo II* because good cause may still exist for the delay in not arraigning a defendant within sixty days from the filing of the complaint. The scheduled arraignment date is not the *sine qua non* of whether a defendant has been promptly arraigned. Instead the prompt arraignment requirement of 8 GCA § 60.10(a) and our holding in *Rasauo II* is that unless good cause is shown, a complaint shall be dismissed where a defendant is not promptly arraigned within sixty days of the filing of the complaint. *Rasauo II*, 2011 Guam 14 ¶ 16. The trial court must engage in a “case by case analysis of whether or not the ‘specific circumstances’ of any given case warrants a delay beyond the 60 days” required for prompt arraignment and if there is good cause for the delay. *Id.* ¶ 14 (citing *People v. Rasauo*, 2011 Guam 1 ¶ 52). Furthermore, the record should reflect those circumstances supporting the reasonableness of the decision.

[29] We now need to examine the record to determine if there was good cause for the delay in Salvador not being promptly arraigned. The complaint was filed on April 22, 2011 and a summons was issued on May 31, 2011 with an initial hearing date of June 29, 2011. The return of service filed two days before the June 29 hearing showed three attempts were made by the marshal to serve the summons on Salvador, but there were no reasons provided to explain the non-service of the initial summons or that good cause existed for the delay in Salvador's arraignment. Salvador RA, tab 5 at 1 (Aff. of Non-Service). Although the trial judge suggests a diligent effort by the Marshal to serve Salvador, the mere three attempts to serve without explanation as to the failures does not itself justify good cause for the delay to promptly arraign Salvador⁸. We find that the record does not reflect the reasons for the delay in the processing and service of the summons, therefore good cause has not been shown for the delay to promptly arraign Salvador. We attribute the court's delay to the People and no time is excluded from the sixty-eight days it took to arraign Salvador. Consequently, Salvador was not promptly arraigned within sixty days from the filing of the complaint pursuant to 8 GCA § 60.10(a) and this court's ruling in *Rasauo II*.

[30] Although we hold that that the trial court erred in concluding that Salvador was not promptly arraigned simply because the initial appearance hearing was set past sixty days, we may still affirm a trial court's dismissal on other grounds. See *Ramos v. Docomo Pacific, Inc.*, 2012 Guam 20 ¶ 25 (citing *People v. San Nicolas*, 2001 Guam 4 ¶ 29 (holding "[a]n appellate court may affirm the judgment of a lower court on any ground supported by the record.")). In reviewing the delay in the processing and service of the summons and scheduling of the initial

⁸ For example, a defendant could cause or contribute to non-service by being off-island, evading the marshals, moving to another residence, and so forth.

hearing past the sixty day time period there is nothing in the record articulating the reasons for this delay or that good cause existed; therefore we affirm the trial court's dismissal of the complaint without prejudice because Salvador was not promptly arraigned.

D. Whether Dismissal for Prompt Arraignment Impairs the People's Prosecutorial Function Without Providing any Corrective Mechanism

[31] Lastly, the People argue that two considerations must be balanced by the court when considering a proper application of the *Rasauo II* rule. First, that a dismissal in cases where the People are not at fault for the delay has no appreciable deterrent effect upon any further misconduct by the People. Appellant's Br. at 23. Second, that a dismissal impairs the People's general prosecutorial right to maintain criminal process in the interests of society. *Id.*

[32] Because the delays in both cases occurred prior to the decision of *Rasauo II*, the People state that it is unsurprising that the trial court was unaware of any obligation to generate any record of the individual circumstances which, may have caused the delay. *Id.* at 24. Moreover, the People contend that the delays here were pre-trial delays and therefore, the statutes governing pre-trial procedures contemplate an escalating process of increased statutory safeguards for a defendant's right as a case moves from inception to resolution. *Id.* at 25. The People submit that the pre-trial delays in these cases represent an early step on the continuum and should be distinguished from later stages of delay in the same continuum. Delays in such cases are not offensive to the notions of justice and expedience as a delay which occurs after an affirmative assertion of a constitutional or statutory speedy trial right. *Id.* at 26. On these bases, the People assert that an interpretation of good cause which excludes what occurred in these cases is both unwarranted and disproportionate to the character of the alleged delay. *Id.* Julian and Salvador counter that the People's ability to prosecute is not impaired because the dismissals were without prejudice. *Id.* at 27.

[33] We have previously addressed whether reading a *de facto* statute of limitations into 8 GCA § 25.30 interferes with prosecutorial discretion and said, “[t]rue, the decision whether to prosecute a case is a decision left to the prosecuting authority; however, the decision when to prosecute a case is not a decision of which a prosecutor enjoys unlimited discretion in determining.” *People v. Villapando, et al.*, 1999 Guam 31 ¶ 48. Here, the People assert they are not at fault for the delays in these cases and there is no deterrent in any further misconduct by the People. Although the delay in the present cases resulted from the issuance of a summons, scheduling of arraignment, and service of the summons, the People were not prevented from requesting from the court the status of the summons and the scheduling of the arraignment. The People did not object to the scheduled date on the summons or the later appearance date before the Magistrate Judge in both cases.

[34] Guam law also provides that a “summons may be served by any person authorized to serve a summons in a civil action.” 8 GCA § 15.70(c) (2005). Clearly, the People were not prevented from having an authorized person other than a marshal assist with the service of a summons when a complaint is filed. Moreover, when the People elect to prosecute a case by the filing of a complaint, the People have a duty “to expedite such proceedings to the greatest degree that is consistent with the ends of justice.” 8 GCA § 80.50(a). Additionally, a change in court processes does not impair the People’s prosecutorial function. We therefore decline to conclude that a dismissal for prompt arraignment in light of our holding in *Rasauo II* interferes with the People’s prosecutorial function.

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V. CONCLUSION

[35] We find first that although the delays in Julian and Salvador's cases occurred before *Rasauo II* was decided and the instant cases were not yet final, we retroactively apply the rule announced in *Rasauo II*. Section 60.10 of Title 8 is a statutory expression of our speedy trial statute and therefore we find cases evaluating delay and good cause under the statutory speedy trial context to be instructional in the prompt arraignment setting. For purposes of prompt arraignment under section 60.10(a) and *Rasauo II* delay, we attribute the court's delay to the People.

[36] In Julian's case, ninety-five days elapsed from the filing of the complaint until the service of the second summons. In examining the record, no good cause was shown to justify the delay of seventy-six days from the service of the initial summons and second summons on Julian. Consequently, in attributing the delay to the People, Julian was not promptly arraigned in accordance with 8 GCA § 60.10(a) and this court's ruling in *Rasauo II*.

[37] In Salvador's case, sixty-eight days elapsed from the filing of the complaint to the initial hearing date. In dismissing the complaint for Salvador, the trial court erred in concluding that Salvador was not arraigned simply because the initial appearance hearing was scheduled beyond sixty days. The scheduling of the hearing past sixty days does not automatically violate prompt arraignment under 8 GCA § 60.10(a) and *Rasauo II*. We however affirm the dismissal on other grounds, and find that the record does not reflect the reasons for the delay in the processing and service of the summons and scheduling of the initial hearing, and no good cause was shown for the delay to promptly arraign Salvador. In attributing the court's delay to the People, no time is excluded from the sixty-eight days and therefore Salvador was not promptly arraigned within sixty days from the filing of the complaint pursuant to 8 GCA § 60.10(a) and *Rasauo II*.

[38] Finally, we do not agree that a dismissal for prompt arraignment impairs the People's prosecutorial function because the People were not prevented from ensuring Julian and Salvador were arraigned within the sixty day time period.

[39] Accordingly, the dismissals for Julian and Salvador are **AFFIRMED**.

Original Signed: **Robert J. Torres**
By

ROBERT J. TORRES
Associate Justice

Original Signed: **Katherine A. Maraman**
By

KATHERINE A. MARAMAN
Associate Justice

Original Signed: **F. Philip Carbullido**
By

F. PHILIP CARBULLIDO
Chief Justice

Attachment A

**Mario Julian
CRA12-003**

		Elapsed Time
May 26 – June 8	Filing of complaint and issuance of summons	13 days
June 9 - July 13	Time period for service of summons by marshal to first hearing where affidavit of service showed no attempts made to serve Julian	35 days
July 14- July 19	Recommendation by Magistrate Judge to Presiding Judge for issuance of second summons	6 days
July 20 - August 29	Time period for service of second summons	41 days
August 30 - August 31	Recommendation by Magistrate Judge for issuance of bench warrant to issuance of filing of bench warrant	2 days
September 1 - September 28	Initial appearance hearing to date of continued arraignment	28 days
Time period from filing of Complaint on May 26, 2011 to continued arraignment on September 28, 2011		125 days

Attachment B

**Levita Salvador
CRA12-004**

		Elapsed Time
April 22 - May 31	Filing of complaint and issuance of summons	39 days
June 1 - June 29	Receipt of summons by marshal to first hearing where affidavit of service showed three attempts made to serve Salvador	29 days
June 30 - July 1	Recommendation by Magistrate Judge for issuance of bench warrant and issuance of warrant	2 days
July 2 - August 31	Time period for service of bench warrant	61 days
September 1 - September 28	Initial appearance to date of continued arraignment	28 days
Time period from filing of Complaint on April 22, 2011 to continued arraignment on September 28, 2011		159 days