

FILED

2012 DEC 31 PM 4: 20

SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

WILLIAM JUNIOR SINGEO,
Defendant-Appellant.

Supreme Court Case No. CRA12-007
Superior Court Case No. CM0572-11

OPINION

Cite as: 2012 Guam 27

Appeal from the Superior Court of Guam
Argued and submitted October 23, 2012
Hagåtña, Guam

Appearing for Defendant-Appellant:

Maria G. Fitzpatrick, *Esq.*
Assistant Public Defender
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MVP Sinajana Commercial Bldg.
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Appearing for Plaintiff-Appellee:

James C. Collins, *Esq.*
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ORIGINAL

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

MARAMAN, J.:

[1] Defendant-Appellant William Junior Singeo brings this interlocutory appeal challenging the trial court's denial of his motion to dismiss the complaint. Singeo claims that under this court's opinion in *People v. Rasauo* the complaint should be dismissed because he was not arraigned within sixty days of the filing of the complaint. 2011 Guam 14 ¶ 14 (hereinafter *Rasauo II*). Specifically, Singeo argues that no good cause existed for the twenty-eight day delay given for Singeo to meet with his appointed defense counsel. For the reasons discussed below, we hold that the trial court did not abuse its discretion in granting a twenty-eight day delay to allow Singeo to consult with counsel in order to make an informed plea at the arraignment. Because there was good cause shown for this delay, Singeo was promptly arraigned pursuant to 8 GCA § 60.10(a) and this court's ruling in *Rasauo II*, and we affirm the trial court's denial of the motion to dismiss.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] On December 20, 2010, Singeo was arrested for Driving Under the Influence of Alcohol and was issued a Notice to Appear ("NTA") on December 28, 2011. Five months later, on May 4, 2011 a complaint was filed charging Singeo with the following violations: DUI in violation of 16 GCA § 18102(a); Improper Storage of an Open Container of an Alcoholic Beverage in a Motor Vehicle (as a misdemeanor) in violation of 16 GCA § 18122; Reckless Driving (as a misdemeanor) in violation of 16 GCA § 9107(a); and Operation of a Motor Vehicle Without a Valid Operator's License (as a petty misdemeanor) in violation of 16 GCA § 3101(a).

[3] The trial court issued a Summons for Arraignment on May 17, 2011 and set a hearing for June 22, 2011.

[4] At the June 22 hearing, Singeo appeared before the Magistrate Judge and requested additional time to seek his own counsel. The Magistrate granted the request, and the matter was continued until July 27, 2011.

[5] At the July 27 hearing, Singeo appeared without counsel and, as a result, a Public Defender was appointed as counsel; the arraignment was continued to August 24, 2011.

[6] Thereafter, Singeo moved to dismiss the complaint pursuant to *Rasauo II* because he was not arraigned within sixty days of the filing of the complaint. From the time the complaint was filed on May 4, 2011 until the date of continued arraignment on August 24, 2011, 112 days elapsed. The trial court denied the motion, and Singeo filed a petition to proceed with an interlocutory appeal pursuant to Rule 4.2 of the Guam Rules of Appellate Procedure. We granted the petition and now address Singeo's appeal of the trial court's decision denying the motion to dismiss for failure to promptly arraign. In the February 24, 2012 Decision and Order, the trial court stated:

There are one hundred twelve (112) days between the filing of the Complaint and the Defendant's arraignment. There is no good cause shown for the first delay of forty-nine (49) days between the filing of the Complaint and the date set by the Summons for the arraignment. There is good cause shown for the thirty-one (31) days after the first appearance for the Defendant to obtain counsel; however, there is not good cause shown for the four days after that. There is good cause shown for the twenty-eight (28) days after the Defendant was appointed counsel at the July 27, 2011 hearing. There is no good cause shown for fifty-three (53) days; and good cause shown for fifty-nine (59) days of delay.

Record on Appeal ("RA"), Dec. & Order at 4 (Feb. 24, 2012).

II. JURISDICTION

[7] This court has jurisdiction to hear an appeal of an interlocutory order pursuant to 7 GCA § 3108(b) (2005) and Rule 4.2 of the Guam Rules of Appellate Procedure.

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. *People v. Rasauo*, 2011 Guam 1 ¶ 14 (hereinafter *Rasauo I*). “A trial court abuses its discretion when its decision is based on an erroneous conclusion of law or where the record contains no evidence on which the judge could have rationally based the decision.” *Town House Dep't Stores, Inc., v. Ahn*, 2003 Guam 6 ¶ 27 (citation omitted). A decision by the trial court will not be reversed unless we are left with “a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon weighing of the relevant factors.” *Duenas v. Brady*, 2008 Guam 27 ¶ 9 (quoting *Santos v. Carney*, 1997 Guam 4 ¶ 2). Purely legal issues are reviewed *de novo*. *People v. Rios*, 2008 Guam 22 ¶ 8.

IV. ANALYSIS

[9] The sole issue raised by Singeo on appeal is the twenty-eight day delay from the appointment of counsel to the date of the continued arraignment. Appellant’s Br. at 2 (Aug. 6, 2012). Singeo concedes the earlier delay to seek his own counsel is excusable as good cause. *Id.* at 8.

[10] Where a defendant is brought before the court for an initial hearing pursuant to a warrant, a summons to appear, or a notice to appear, the court shall inform the defendant of the following:

(1) of the complaint against him and of any affidavits filed therewith.

(2) of his right to retain counsel.

(3) of his right to request the assignment of counsel if he is unable to obtain counsel.

(4) of the general circumstances under which he may secure his pretrial release.

(5) of his right to prosecution by indictment, where such right is available.

(6) of his right to a preliminary examination, where such right is available.

(7) that he is not required to make a statement and that any statement made by him may be used against him.

8 GCA § 45.30(a) (2005). Section 45.30(b) provides for the appointment of counsel if the defendant appears without counsel and requires the assistance of counsel. Finally, section 45.30(c) states that at the time of the first appearance, “[t]he defendant shall not be called upon to plead” and “shall be allowed *reasonable time* and opportunity to obtain and consult with counsel” 8 GCA § 45.30(c) (2005) (emphasis added).

[11] Additionally, 8 GCA § 60.30 states “[i]f, on the arraignment the defendant requires it, he shall be allowed a reasonable time to answer.” 8 GCA § 60.30 (2005). The note in this section reads:

The defendant has the right to appear with counsel and a reasonable delay after the first appearance and before arraignment for the purpose of obtaining counsel should always be provided under § 45.30. However, even though counsel has already been obtained further time may also be necessary to make an informed plea and this Section so provides.

Id. (internal citations omitted).

[12] In *Rasauo II*, this court held “that 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.” *Rasauo II*, 2011 Guam 14 ¶ 14. The court went on to say “in determining whether

arraignment has occurred with reasonable speed, a court must consider the specific circumstances of the case.” *Id.* (citing *Rasauo I*, 2011 Guam 1 ¶ 52). Finally, we “emphasize[d] 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 beyond the 60 day period. . . . [O]ur holding is 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.” *Rasauo II*, 2011 Guam 14 ¶ 14.

[13] Singeo argues good cause for delay cannot be found in the twenty-eight days given to him to meet with appointed counsel. *See* Appellant’s Br. at 9. Here, guidance as to whether there is good cause shown is provided by section 45.30(c) and *Rasauo II*. A defendant must be given reasonable time and opportunity to obtain and consult with counsel, and the court should consider the circumstances in each case to decide what is and is not excusable delay for good cause. *Rasauo II*, 2011 Guam 14 ¶ 14. Singeo requested counsel, and the trial court believed twenty-eight days was a reasonable amount of time for him to complete this task. RA, Dec. & Order at 4 (Feb. 24, 2012). We are not left with a definite and firm conviction that the court committed a clear error of judgment in the conclusion it reached upon weighing of the relevant factors. We hold the trial court did not abuse its discretion in granting a delay of twenty-eight days to allow Singeo the opportunity to consult with counsel in order to make an informed plea at the arraignment and in finding there was good cause shown for not arraigning Singeo within sixty days of the filing of the complaint.

[14] In determining what period of delay is necessary in order to allow a defendant reasonable time and opportunity to obtain and consult with counsel as set forth in 8 GCA § 45.30(c), the

trial courts must be cognizant of the prompt arraignment requirement of 8 GCA § 60.10(a) and our holding in *Rasauo II* 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 ¶ 14. A trial court should not automatically grant a pre-determined time period for a defendant to meet with appointed counsel. Instead, in determining what period of delay is necessary in order to allow a defendant reasonable time and opportunity to obtain and consult with counsel, the trial court should engage in a “case by case analysis of whether or not the ‘specific circumstances’ of any given case warrants a delay beyond” the sixty days required for prompt arraignment and if there is good cause for the delay. *Id.* Furthermore, the record should reflect those circumstances supporting the reasonableness of the decision. *People v. Julian*, 2012 Guam 26. Because there was good cause shown for excluding the time period for the delay resulting from the appointment of counsel to the continued arraignment date, we hold that Singeo was promptly arraigned pursuant to 8 GCA § 60.10(a) and this court’s ruling in *Rasauo II*.

V. CONCLUSION

[15] Title 8 GCA § 45.30(c) provides that a defendant shall not be required to plead at an initial appearance and shall be allowed reasonable time and opportunity to obtain and consult with counsel. The trial court did not abuse its discretion in granting a twenty-eight day delay to allow Singeo the opportunity to consult with counsel in order to make an informed plea at the continued arraignment. There was good cause shown for not arraigning Singeo within sixty days of the filing of the complaint; therefore we hold that Singeo was promptly arraigned pursuant to

8 GCA § 60.10(a) and this court's ruling in *Rasauo II*. Accordingly, we **AFFIRM** the trial court's denial of the motion to dismiss.

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**

F. PHILIP CARBULLIDO
Chief Justice