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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,
Plaintiff-Appellant,

v.

JOSE RIOS CAMACHO, JR.,
Defendant-Appellee.

OPINION

Cite as: 2013 Guam 3

Supreme Court Case No.: CRA12-017
Superior Court Case No.: CM1175-11

Appeal from the Superior Court of Guam
Argued and submitted on February 13, 2013
Hagåtña, Guam

Appearing for Plaintiff-Appellant:

James C. Collins, *Esq.*
Assistant Attorney General
Office of the Attorney General
Prosecution Division
287 W. O'Brien Dr.
Hagåtña, GU 96910

Appearing for Defendant-Appellee:

Leevin T. Camacho, *Esq.*
Law Office of Leevin T. Camacho
194 Hernan Cortez Ave., Ste. 216
Hagåtña, GU 96910

ORIGINAL

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

CARBULLIDO, C.J.:

[1] The Guam Legislature enacted Guam Public Law 31-109 to replace Guam’s family violence diversion program with a deferred plea program. Before P.L. 31-109 became effective, Defendant-Appellee Jose Rios Camacho, Jr. allegedly committed two misdemeanor offenses and was eligible for the diversion program. Camacho moved for diversion but did not attend his diversion hearing. P.L. 31-109 then became effective, and Plaintiff-Appellant People of Guam soon after filed an opposition to Camacho’s motion for diversion arguing that diversion was no longer available. The trial court issued a Decision and Order granting Camacho’s motion for diversion. The People subsequently brought this interlocutory appeal, challenging the trial court’s ruling. For the reasons stated herein, the Superior Court’s grant of Camacho’s motion for diversion is affirmed.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] P.L. 31-109, titled “AN ACT . . . TO *REPEAL* AND *REENACT* §§ 30.80 THROUGH 30.80.5 OF CHAPTER 30, TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO DEFERRED PLEAS FOR DOMESTIC VIOLENCE ABUSERS,” was enacted on September 30, 2011. Guam Pub. L. 31-109 (Sept. 30, 2011). P.L. 31-109 repealed former sections of the Guam code relative to the family violence diversion program (former 9 GCA §§ 30.80-.80.5), replacing it with a family violence deferred plea program (new 9 GCA §§ 30.80-.80.5). *See* P.L. 31-109; *compare* former 9 GCA §§ 30.80-.80.5, *with* new 9 GCA §§ 30.80-.80.5. This law became effective 180 days after the date of enactment.

[3] In the instant case, Camacho was charged in the Superior Court with one count of family violence as a misdemeanor and one count of assault as a misdemeanor, allegedly committed on or about November 21, 2011. On January 12, 2012, the People filed a notice of eligibility for diversion, indicating that Camacho was eligible for family violence diversion pursuant to former 9 GCA § 30.80 and that the People would agree to offer diversion in the case. On March 27, 2012 -- the day before P.L. 31-109 became effective -- Camacho filed a Notice of Motion and Motion for Diversion. Camacho was then scheduled for a diversion hearing on March 28, 2012, but did not appear. Two days later, the People filed an opposition to Camacho's motion for diversion, arguing that P.L. 31-109 was now in effect and therefore Camacho could not enter into the now former diversion program.

[4] The trial court, however, granted Camacho's motion for diversion. The trial court held that applying the provisions of P.L. 31-109, which was not in effect at the time of Camacho's alleged offense, would violate the protections against *ex post facto* laws. It further held that "[c]rimes allegedly committed prior to the effective date of [P.L. 31-109] are not subject to the requirements of [P.L. 31-109]." Record on Appeal ("RA"), Dec. & Order on Def.'s Mot. for Diversion at 6 (May 2, 2012).

[5] The People thereafter filed a Verified Petition for Permission to Appeal ("Petition"), seeking permission to bring an interlocutory appeal on this matter. The People presented a single issue for review: whether retrospective application of the provisions of P.L. 31-109 is prohibited by the *ex post facto* clauses of the United States Constitution and the Organic Act of Guam. We granted the Petition, giving rise to the instant appeal, indicating that we would clarify whether

the provisions of P.L. 31-109 may be applied retrospectively to individuals whose offenses occurred prior to the date on which the law became effective.

[6] In granting the Petition, we explained that interlocutory review would be appropriate because the appeal would involve purely a question of law and because resolution of this issue would “[c]larify [an] issue[] of general importance in the administration of justice.” Order at 4 (May 30, 2012) (quoting 7 GCA § 3108(b)(3)). We indicated that interlocutory review for such purpose is permitted under 7 GCA § 3108(b)(3).

II. JURISDICTION

[7] The statutory basis for the court’s jurisdiction to entertain this interlocutory appeal is found under 7 GCA § 3108(b) (2005) and Rule 4.2 of the Guam Rules of Appellate Procedure.

III. STANDARD OF REVIEW

[8] Issues of statutory construction are reviewed *de novo*. *Guam Greyhound, Inc. v. Brizill*, 2008 Guam 13 ¶ 6.

IV. ANALYSIS

[9] To determine whether P.L. 31-109 applies to Camacho, we must consider whether it operates retrospectively because Camacho’s offenses occurred prior to the date on which the law became effective. Camacho argues for the first time on appeal that P.L. 31-109 does not apply to him because there is a presumption that P.L. 31-109 operates prospectively. Appellee’s Br. at 5 (Oct. 22, 2012) (citing *In re Req. of Twenty-Fourth Guam Leg. for Declaratory Judgment*, 1997 Guam 15 ¶ 15). Camacho did not raise this specific argument before the trial court, and the trial court did not address this argument. See RA, Dec. & Order on Def’s Mot. for Diversion at 1-7. As a matter of general practice, “this court will not address an argument raised for the first time

on appeal.” *Taniguchi-Ruth + Assocs. v. MDI Guam Corp.*, 2005 Guam 7 ¶ 78 (quoting *Univ. of Guam v. Guam Civil Serv. Comm’n*, 2002 Guam 4 ¶ 20). However, we may do so when the issue is purely one of law, as it is in this case. *Id.* ¶ 80 (quoting *Dumaliang v. Silan*, 2000 Guam 24 ¶ 12 n.1). Accordingly, we will exercise our discretion and address Camacho’s argument that there is a presumption that P.L. 31-109 operates prospectively. The People do not dispute this presumption. Appellant’s Reply Br. at 4 (Oct. 29, 2012).

[10] A statute is presumed to have only prospective effect, unless it is made expressly retroactive or is retroactive by virtue that it is necessarily implied that the Legislature intended for the statute to operate as such. *See In re Req. of Twenty-Fourth Guam Leg. for Declaratory Judgment*, 1997 Guam 15 ¶ 15-16. Guam also has a statutory provision, which requires an express declaration of retroactivity. *See* 1 GCA § 702 (2005) (“No part of this Code is retroactive, unless expressly so declared.”). When there is no express retroactivity clause, the court may look to the Legislature’s intent for guidance as to whether retrospective impact is otherwise specifically directed or is necessary to accomplish the purposes for which the statute was enacted. *In re Req. of Twenty-Fourth Guam Leg. for Declaratory Judgment*, 1997 Guam 15 ¶ 15.

A. Absence of an Express Retroactivity Clause

[11] Here, the Legislature did not include an express retroactivity clause in P.L. 31-109. *See* P.L. 31-109. We therefore look to legislative intent to glean whether the Legislature intended to apply P.L. 31-109 retrospectively to a defendant who committed an offense before P.L. 31-109’s effective date of March 28, 2012. *See* P.L. 31-109:4 (setting forth P.L. 31-109’s effective date).

B. Legislative Intent

[12] In determining legislative intent, courts look to the language of the statute and its legislative history. *People v. San Nicolas*, 2001 Guam 4 ¶ 13. Upon examining P.L. 31-109, we cannot say that the statute contains language that indicates an intention to make the deferred plea program available to an individual who committed an offense before the statute's effective date.

[13] Instead, a careful review of P.L. 31-109 indicates that the Legislature intended for P.L. 31-109 to apply prospectively. P.L. 31-109 states that it is the intent of the Legislature "to replace Guam's domestic violence diversion program with a deferred plea program." P.L. 31-109:1. Notably, in choosing to replace the diversion program, the Legislature could have made P.L. 31-109 effective immediately or applicable to all pending cases, but in this instance it did not. *See* Appellee's Br. at 5. Instead, the Legislature specifically chose to delay P.L. 31-109's effective date until 180 days after enactment. P.L. 31-109:4; *see* 1 GCA § 102 ("Every law enacted by the Guam Legislature shall go into effect at midnight of the day of its approval by the Governor, *unless otherwise provided therein.*") (emphasis added). Given the Legislature's decision to set a later effective date, 180 days after the date of enactment, coupled with the Legislature's exclusion of an express retroactivity clause, it would be amiss to declare that the language of the statute indicates that the Legislature intended to apply P.L. 31-109 retrospectively.

[14] The statute's legislative history is similarly void of any indication that the Legislature intended to apply P.L. 31-109 retrospectively. *See* Appellant's Br. (July 12, 2012), App. A (Comm. Report on Bill. No. 215-31 (COR), July 27, 2011). Moreover, nothing in the legislative history indicates that the retrospective application of P.L. 31-109 is necessary to accomplish the

purposes for which the statute was enacted. *Cf. In re Req. of Twenty-Fourth Guam Leg. for Declaratory Judgment*, 1997 Guam 15 ¶ 16-20 (concluding that it was necessarily implied that the Legislature intended to retrospectively apply the newly enacted statute because the legislative history made it evident that retrospective application was necessary to accomplish the purpose for which the statute was enacted). As such, we conclude that P.L. 31-109 operates prospectively and was intended to replace the family violence diversion program with the deferred plea program only with respect to defendants who offend after P.L. 31-109's effective date of March 28, 2012.

[15] Having concluded that P.L. 31-109 operates prospectively, we find no need to consider the import of the protections against *ex post facto* laws¹ or the applicability of 2 GCA § 2105.² Because P.L. 31-109 operates prospectively, it is axiomatic that we need not engage in an *ex post facto* analysis because “[e]very *ex post facto* law must necessarily be retrospective.” *Calder v. Bull*, 3 U.S. 386, 391 (1798). Similarly, we need not address the applicability of 2 GCA § 2105, which governs the effect of a statute's repeal or amendment on, among other things, “any offense committed” or “any action or proceeding had or commenced” prior to the statute's repeal or amendment. 2 GCA § 2105.

¹ The People argue that the trial court erred when it found that the retrospective application of P.L. 31-109 would violate the protections against *ex post facto* laws. Appellant's Br. at 9-18.

² Camacho argues that P.L. 31-109 does not apply to him because 2 GCA § 2105 provides that “[t]he repeal or amendment of any statute shall not affect any offense committed or any act done or right accruing or accrued or any action or proceeding had or commenced prior to such repeal or amendment[.]” Appellee's Br. at 3 (quoting 2 GCA § 2105).

V. CONCLUSION

[16] Based on the foregoing grounds,³ we **AFFIRM** the trial court's grant of Camacho's motion for diversion.

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

³ We note that in reviewing a trial court's decision, we may affirm for any reason presented in the record, *Hart v. Hart*, 2008 Guam 11 ¶ 15, even if the reason was not raised below, *Loftis v. United Parcel Service, Inc.*, 342 F.3d 509, 514 (6th Cir. 2003).