IN THE SUPREME COURT OF GUAM

MICHELE T. UNGACTA,
Petitioner,

v.

SUPERIOR COURT OF GUAM,
Respondent,

and

PEOPLE OF GUAM,
Real Party In Interest.

Supreme Court Case No. WRM13-005
Superior Court Case No. CF0017-12

OPINION

Cite as: 2013 Guam 29

Submitted Without Argument
Hagåtña, Guam

Appearing for Petitioner:
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Appearing for Real Party in Interest:
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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, Associate Justice; and KATHERINE A. MARAMAN, Associate Justice.

PER CURIAM:

[1] Petitioner Michele T. Ungacta petitions this court for a writ of mandate commanding Respondent Superior Court of Guam to vacate its ruling denying her motion to dismiss on speedy trial grounds, and to dismiss the case based upon the failure to bring her to trial within the statutory speedy trial period set forth in 8 GCA § 80.60(a)(3). For the reasons set forth below, we grant a peremptory writ of mandate.[1]

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] Ungacta was indicted on January 17, 2012, on the charges of Simple Stalking (As a 3rd Degree Felony), Harassment (As a Petty Misdemeanor), Obstruction of Government Function (As a Misdemeanor), and Official Misconduct (As a Misdemeanor). On February 8, 2012, Ungacta was arraigned and asserted her right to a speedy trial.[2] On March 1, 2012,[3] Ungacta filed a motion to dismiss the indictment for failure of Real Party In Interest People of Guam (the "People") to give exculpatory evidence to the grand jury. The People thereafter filed a Superseding Indictment on March 7, 2012, which charged Ungacta with Simple Stalking (As a 3rd Degree Felony), Harassment (As a Petty Misdemeanor), Obstruction of Government Function (As a Misdemeanor), and two counts of Official Misconduct (As a Misdemeanor). On

[1] This opinion supersedes the Order issued by this court *nunc pro tunc* to October 9, 2013.

[2] Ungacta was not in custody at this time nor at any time relevant to the speedy trial inquiry.

[3] Ungacta and the People state in their filings that the date of this motion was February 29, 2012. However, the date that the motion was stamp filed in the Superior Court states that the filing date is March 1, 2012. The year 2012 was a leap year, but we cannot speculate as to whether this accounts for the discrepancy between the proffered file date and the stamp file date. However, for purposes of our inquiry, we will use the date showing as the official Superior Court file date—March 1, 2012.

March 8, 2012, the Superior Court of Guam filed a motion to quash a subpoena issued upon it by the People, which sought arguably protected information from Ungacta's personnel file.

[3] Ungacta was arraigned on the Superseding Indictment on April 4, 2012, and stated at that arraignment that her initial assertion of speedy trial on February 8, 2012, remained in effect. On April 11, 2012, Ungacta filed a motion to dismiss the Superseding Indictment, alleging that the indictment failed to provide a plain, concise, and definite written statement of essential facts constituting the crimes charged. On May 9, 2012, the trial court heard the motion to dismiss and took it under advisement. On August 9, 2012, the trial court issued a decision and order granting Ungacta's motion to dismiss in part and denying her motion in part.[4]

[4] On August 22, 2012, Ungacta filed another motion to dismiss, this time alleging that her statutory speedy trial rights were violated because she had not been brought to trial within 60 days of her arraignment. Before the motion was heard, the People filed a Second Superseding Indictment, again charging Ungacta with Simple Stalking (As a 3rd Degree Felony), Harassment (As a Petty Misdemeanor), Obstruction of Government Function (As a Misdemeanor), and two counts of Official Misconduct (As a Misdemeanor). On September 7, 2012, Ungacta was arraigned on the Second Superseding Indictment and continued to assert her right to a speedy trial. On September 19, 2012, Ungacta filed another motion to dismiss based on a violation of her statutory speedy trial rights. The trial court issued a decision and order on November 30, 2012, denying Ungacta's motion to dismiss on grounds of speedy trial violation. On the same day, the trial court also issued a decision and order granting the Superior Court's motion to quash.

[4] The Simple Stalking charge of the Superseding Indictment was dismissed as being "facially deficient[,]" but it was later recharged in the Second Superseding Indictment on August 31, 2012. *See* Pet'r's Pet. Writ Mand. ("Pet."), Ex. G at 2 (Dec. & Order, Aug. 9, 2012), Ex. I (Second Superseding Indictment, Aug. 31, 2012).

[5] Ungacta waived her right to a speedy trial on December 4, 2012. On January 10, 2013, she filed a motion for reconsideration, asking the trial court to reconsider its speedy trial decision, arguing that the trial court erroneously undertook a constitutional speedy trial analysis rather than a statutory speedy trial analysis. In a July 25, 2013 decision and order, the trial court acknowledged employing an erroneous speedy trial analysis in its earlier decision and order, but nonetheless denied Ungacta's motion for reconsideration, citing technical defects in the motion.

[6] Ungacta filed a Petition for a Writ of Mandate on August 2, 2013. The People filed its opposition brief on August 5, 2013, and the Superior Court declined the invitation to file an Answer. Additionally, Ungacta and the People, by order of this court, each filed a table laying out their respective speedy trial calculations. The court further ordered Ungacta and the People to file supplemental briefs on a single limited issue. Ungacta timely filed her supplemental brief on August 28, 2013. The People filed their supplemental brief on September 20, 2013, and Ungacta filed her reply brief on September 24, 2013. The matter was submitted to the court without argument.

II. JURISDICTION

[7] This court has jurisdiction over original proceedings for mandamus pursuant to 7 GCA §§ 3107(b), 31202, and 31203 (2005). In *People v. Nicholson*, this court determined that 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. 2007 Guam 9 ¶ 7 (citing *Carver v. Superior Court*, 1998 Guam 23 ¶ 9).

III. STANDARD OF REVIEW

[8] A defendant bringing a pre-trial writ of mandamus need not demonstrate prejudice, but instead need only show that there was unjustified delay in bringing the case. *People v. Munoz*, No. CR-94-00100A, 1995 WL 604346, at *2 n.1 (D. Guam App. Div. Sept. 28, 2005) (citing

People v. Wilson, 383 P.2d 452, 460 (Cal. 1963)). A trial court's denial of a defendant's motion to dismiss on speedy trial grounds is reviewed for an abuse of discretion. *See Nicholson*, 2007 Guam 9 ¶ 13. A writ of mandate compelling dismissal on speedy trial grounds should be issued when "it 'clearly appears that there was no good cause shown' for a delay at the hearing, and the trial court had a 'clear positive legal duty [to] dismiss the indictment.'" *Id.* ¶ 8 (quoting *Gill v. Villagomez*, 140 F.3d 833, 835 (9th Cir. 1998)).

IV. ANALYSIS

[9] The court shall dismiss a criminal action if a person charged with a crime, who is not in custody at the time of his or her arraignment, is not brought to trial within 60 days of the arraignment. 8 GCA § 80.60(a)(3) (2005). Dismissal is mandatory unless good cause is shown. 8 GCA 80.60(a) ("the court *shall dismiss* a criminal action"); *Nicholson*, 2007 Guam 9 ¶ 26. However, subsection (b) sets forth exceptions whereby a court is permitted to set the trial beyond the 60-day period. 8 GCA § 80.60(b). The exceptions described in sections 80.60(b)(1) and (b)(2) are not relevant to the facts as presented in this case, and therefore, only a section 80.60(b)(3) analysis is applicable under these facts. Section 80.60(b)(3) states that an action shall not be dismissed pursuant to section 80.60(a) if "[g]ood cause is shown for the failure to commence the trial within the prescribed period," which, in this case, is within 60 days. 8 GCA § 80.60(b)(3).

[10] Between the time Ungacta was arraigned on February 8, 2012, and the time she waived her speedy trial rights on December 4, 2012, more than 60 days had undisputedly elapsed. The

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inquiry, however, is whether any of those days is excludable from the speedy trial calculation as "good cause,"[5] so that dismissal is not mandatory under section 80.60(a).

A. General Legal Principles

[11] Some general legal principles guide this court's analysis. First, because Ungacta seeks relief for her statutory speedy trial claim by way of pre-trial writ of mandamus, which this court has previously found to be an appropriate remedy in this situation, prejudice to Ungacta by any delay not founded upon good cause is presumed, and Ungacta need not make a special showing of prejudice in order to obtain relief. *See Nicholson*, 2007 Guam 9 ¶ 24. Therefore, the trial court's reasoning in its decision and order that Ungacta failed to show how she has been prejudiced, which the People reiterated in their Answer, is not a tenable argument, as Ungacta was not required to make such a showing. *See* Pet., Ex. L at 5-6 (Dec. & Order, Nov. 30, 2012); Real Party In Interest's Br. Opp'n Pet. Writ Mand. at 11 (Aug. 5, 2013).

[12] Second, the instant case deals with superseding indictments, which differ from reindictments or new indictments in terms of their effect on speedy trial calculations. This court, in *People v. Flores*, 2009 Guam 22, discussed the differences between these events. "A superseding indictment is an indictment filed before the original or underlying indictment is dismissed," whereas a reindictment "is a new indictment . . . filed when the original or underlying indictment or charges are dismissed." *People v. Flores*, 2009 Guam 22 ¶ 18 (citing *United States v. Rojas-Contreras*, 474 U.S. 231, 237-39 (1985) (Blackmun, J., concurring)). In *Flores*, this court found that the defendant's speedy trial clock from the first indictment, which was

[5] Ungacta does not dispute that any time during which her motions were under advisement by the trial court was not good cause, nor does she allege that the trial court unreasonably delayed disposing of her motions. *See* Pet'r's Speedy Trial Table (Aug 8, 2013) (excluding the days during which her motions to dismiss were under advisement from the "time asserted" calculation). Therefore, there will be no discussion of whether these particular periods amounted to good cause, and their exclusion from the calculation will be presumed.

dismissed by the People *nolle prosequi*, did not carry over to the later indictments because they were different criminal actions (or reindictments) and not superseding indictments. *Id.* ¶¶ 28-30.

[13] The case presently before the court does not involve new indictments, but rather, it involves two superseding indictments—both of which charge the same offenses against Ungacta as the original indictment, both of which involve the same general facts and circumstances as the original indictment, and both of which bear the same case number as the original indictment. *See* Pet., Exs. A (Indictment, Jan. 17, 2012), E (Superseding Indictment, Mar. 7, 2012), I (Second Superseding Indictment, Aug. 31, 2012). Because the superseding indictments in this case are a continuation of the same criminal proceeding, as they are based essentially on the same facts and circumstances, the speedy trial clock from Ungacta's arraignment on the original indictment continues through the superseding indictments and does not start anew upon each subsequent arraignment. *See, e.g.*, *State v. Johnson*, 2013 WL 938598, at *6 n.3 (Ohio Ct. App. Mar. 11, 2013) ("There is no dispute that the superseding indictment was subject to the same speedy-trial limitations as the original charges, as the superseding indictment was based on the same facts and circumstances." (citing *State v. Baker*, 676 N.E.2d 883, 885 (Ohio 1997))).

[14] The trial court, in its speedy trial decision and order, determined that its analysis as to whether Ungacta's speedy trial rights were violated required that the Simple Stalking charge be considered separately from the remaining charges because it was dismissed from the Superseding Indictment on Ungacta's motion and, therefore, in the trial court's reasoning, was not subject to the original speedy trial clock that began on February 8, 2012. *See* Pet., Ex. L at 2-7 (Dec. & Order). The trial court cited the case of *United States v. Loud Hawk*, 474 U.S. 302, 310 (1986), for the proposition that "an indictment dismissed upon the defendant's motion restarts the clock once the charge is reinstated." Pet., Ex. L at 3 (Dec. & Order) (citation omitted). The trial court also stated that "[w]here there is no outstanding charge, only the *actual* restraints imposed . . .

will invoke the constitutional right to speedy trial." *Id.* (quoting *Loud Hawk*, 474 U.S. at 302) (internal quotation marks omitted). The trial court ultimately found that 60 days had not yet elapsed on the Simple Stalking charge, but that more than 60 days had elapsed on the remaining three charges. *Id.* at 3-4.

[15] Putting aside the fact that the trial court embarked on a constitutional speedy trial inquiry when such was not raised by Ungacta, the case relied upon by the trial court is not supportive of this finding. A closer read of the *Loud Hawk* case, and specifically of the language quoted by the trial court in its decision and order, reveals that this statement was made in the context of a dismissed indictment (not merely a dismissed charge, as is the case here). In fact, the entire sentence from the *Loud Hawk* case reads as follows: "The Court has found that *when no indictment* is outstanding, only the '*actual* restraints imposed by arrest and holding to answer a criminal charge . . . engage the particular protections of the speedy trial provision of the Sixth Amendment.'" *Loud Hawk*, 474 U.S. at 310 (first emphasis added). In Ungacta's case, even with the dismissal of the Simple Stalking charge, there was always an outstanding indictment against her since the time of the filing of the original indictment on January 17, 2012.

[16] In a situation such as this, where some but not all charges are dismissed and a superseding indictment recharges the dismissed counts, all the charges inherit the speedy trial clock of the original indictment. *See, e.g.*, *United States v. Karsseboom*, 881 F.2d 604, 605 (9th Cir. 1989) ("[I]f a trial court dismisses some but not all counts of an indictment, and a defendant is reindicted on the dismissed counts, the retained count and the superseding indictment both inherit the Speedy Trial Act clock applied to the original indictment.").[6] We hold, therefore, that all four

[6] The *Karsseboom* case deals specifically with the Federal Speedy Trial Act and was previously found unpersuasive by this court on other grounds in *People v. Flores*, 2009 Guam 22. However, even though case law interpreting federal statutory language is not controlling on our court, we may find guidance in considering the policy behind such holdings, absent any of our own statutes or case law to the contrary.

charges against Ungacta relate back to the original arraignment date for speedy trial purposes.

B. Effect of Superseding Indictments on Original Indictment

[17] "[A] superseding indictment may be returned while the first indictment is pending unless it broadens or substantially amends charges in the original indictment." *People v. Palomo*, 1993 WL 129624, at *4 (D. Guam App. Div. Apr. 8, 1993) (citing *United States v. Sears, Roebuck & Co., Inc.*, 785 F.2d 777 (9th Cir. 1986)); *see also* 21 Am. Jur. 2d *Criminal Law* § 270 (2013) ("A superseding indictment filed while the original indictment is validly pending relates back to the time of filing of the original indictment, if it does not substantially broaden or amend the original charges."). However, "[t]he Guam Code does not provide any specific procedure for the issuance of 'superseding' indictments, nor does it define how such indictments are to interact with original indictments." *People v. Rios*, 2011 Guam 6 ¶ 23 n.9 (citing *United States v. Hickey*, 580 F.3d 922, 932-33 (9th Cir. 2009) (Reinhardt, J., specially concurring)).

[18] The federal approach, and that of some other jurisdictions, seems to be that a superseding indictment does not in fact supersede or replace an original indictment, but may exist parallel to the original indictment, and the prosecution may elect which indictment to proceed with. *See, e.g.*, *Hickey*, 580 F.3d at 930 (citing cases from various federal circuits addressing this approach);[7] *Montgomery v. State*, 575 S.E.2d 917, 920 (Ga. Ct. App. 2003).

[7] In the concurring opinion in the *Hickey* case, the concurring judge criticized the meaning courts have given to the word "superseding" in the context of criminal prosecutions, proffering that their use strips the word of its meaning. Judge Reinhardt stated in his concurrence:

> I recognize that, under the precedent cited in the opinion, both in and out-of-circuit, "superseding" has been given a meaning in the context of a criminal indictment that is the direct opposite of its meaning in every other known context. This is, unfortunately, not the first occasion on which we have construed words in this manner. If "slight" may be equated with "substantial" and "another state" may include the "same state," then we should not be surprised that a superseding indictment does not supersede anything at all. I do not favor depriving words of all meaning simply in order to reach a desired legal result. Here, I see no reason, rational or otherwise, to treat the word "superseding" as meaning "not replacing," as we have done before and as we do again here. An abundance of judicial creativity has been devoted to tasks like interpreting "another" to mean "the same"; "slight" to mean "substantial"; and "superseding" to mean "not superseding." I propose

[19] California seems to take a different approach, however. See, by contrast, *People v. Mack*, wherein a California appellate court stated: "It is well established that an amendatory pleading supersedes the original one, which ceases to perform any function as a pleading." 17 Cal. Rptr. 425, 428-29 (Dist. Ct. App. 1961) (quoting *Meyer v. State Bd. of Equalization*, 267 P.2d 257, 262 (Cal. 1954)) (internal quotation marks omitted). Additionally, the California case of *People v. Jones*, 39 Cal. Rptr. 302 (Dist. Ct. App. 1964), involved criminal defendants' challenge of the trial court's decision to overrule a demurrer to a second amended indictment on a claim of misjoinder of offenses. The California appellate court stated:

> The demurrer on this ground which was overruled by the trial court was to the second amended indictment. However, as we have already pointed out, the People filed a third amended indictment . . . to which no demurrer was interposed. An amended accusatory pleading supersedes the pleadings previously filed. Accordingly, the second amended indictment had no function as a pleading.

Id. at 312 (citations omitted); *see also People v. Garcia*, 49 Cal. Rptr. 146, 147-48 (Dist. Ct. App. 1966) ("The amended indictment superseded the original."); *People v. Hamlin*, 89 Cal. Rptr. 3d 402, 425-27 (Ct. App. 2009).

1. Ungacta's Motions to Dismiss Based on Defects in the Indictment

[20] Because Guam's Criminal Procedure Code is not clear as to what effect a superseding or amended indictment has on the original indictment, our decision on which approach this court will adopt may be a determining factor in whether Ungacta's statutory speedy trial claim succeeds. If this court finds that the *filing* of a superseding indictment has the effect of replacing the preceding indictment, then Ungacta's motions to dismiss her original indictment based on

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> redirecting that creativity to better uses, such as finding terms that actually mean what they appear to mean. We could start by using "second indictment" or "first additional indictment" to describe an indictment that follows the original indictment, but does not "supersede" it. Were we to do so, we might earn more public trust and respect than we are accorded now. Any additional amount, no matter how slight, *i.e.* substantial, would be most welcome.

Hickey, 580 F.3d at 932-33 (Reinhardt, J., specially concurring) (citation omitted).

defects of that particular charging document cannot still be considered "pending" for good cause once that allegedly defective indictment has been replaced by a superseding indictment. In that instance, Ungacta's speedy trial clock, which was tolled when she filed her first motion to dismiss on March 1, 2012, resumed once the Superseding Indictment was filed on March 7, 2012 (and not when she was later arraigned on the Superseding Indictment on April 4, 2012). The trial court seems to have acknowledged this, albeit indirectly, in its August 9, 2012 decision and order, wherein it stated: "The Court notes [the January 17, 2012 indictment] was the first indictment issued against the defendant, which was eventually superseded *on March 7, 2012*." Pet., Ex. G at 2 n.1 (Dec. & Order) (emphasis added).

[21] The contrary line of reasoning is that both an original indictment and a superseding indictment can proceed simultaneously until one or the other is formally dismissed, as the federal approach seems to be, such that the mere *filing* of the superseding indictment did not resume the speedy trial clock, which was tolled by Ungacta's motion to dismiss (i.e., so long as the original indictment can still be considered "pending," there is still good cause for the tolling to continue).

[22] The court finds that the more logical approach is to hold that the filing of a superseding indictment is the significant event that starts the clock ticking again, and not the re-arraignment on a superseding indictment. This is especially so because, as discussed above, we find that the superseding indictment is a continuation of the original criminal proceeding, and that the speedy trial clock relates back to the time speedy trial was originally asserted. *See People v. Pope*, 947 N.Y.S.2d 634, 636 (App. Div. 2012) ("For purposes of [speedy trial] calculations, a superseding indictment relates back to the original indictment."); *Terry v. Commonwealth*, 253 S.W.3d 466, 476 (Ky. 2007) ("Although better practice would be for a defendant to be arraigned on all charges in a superseding indictment, rearraignment is absolutely necessary only if the charges in the superseding indictment are materially different than those in the original indictment."); 21

Am. Jur. 2d *Criminal Law* § 547 (2013) (indicating that arraignment on a superseding indictment is only necessary where the indictment has been materially changed, suggesting that the re-arraignment might not be the significant event here).

[23] Because Ungacta's March 1, 2012 motion to dismiss dealt with alleged problems with the January 17, 2012 indictment, and because a Superseding Indictment was thereafter filed on March 7, 2012, it should not be deemed a "good cause" delay to keep her speedy trial clock tolled between March 7, 2012 and April 4, 2012 (when she was re-arraigned)—a period of time when the motion was arguably already moot. The first tolling period, therefore, is March 1-7, 2012. Ungacta then filed a second motion to dismiss on April 11, 2012, alleging problems with the Superseding Indictment. The trial court issued its decision and order on that motion on August 9, 2012, which resumed the clock. Hence, the second tolling period is August 9-22, 2012.

2. Effect of Superior Court's Motion to Quash

[24] On March 8, 2012, the Superior Court of Guam, through counsel, filed a motion to quash a subpoena issued upon it by the People, which sought information from Ungacta's personnel file, which the Superior Court deemed protected. The trial court issued a decision and order on November 30, 2012, granting the motion to quash. The People claim that Ungacta orally joined in the Superior Court's motion and that therefore, the time period during which this motion was pending (March 8, 2012 to November 30, 2012) should be excluded from Ungacta's speedy trial clock. *See* Real Party in Interest's Br. Opp'n Pet. Writ Mand. at 4-5, 9-10 ("During a trial hearing and on the record, defense counsel orally joined in that motion. Presumably, joining the motion to quash that, if granted, inures a benefit to Ungacta . . . ."). Ungacta asserts that she never joined in this motion nor took any position on the motion. *See* Pet., Ex. K at 2 (Mem. L. in Supp. Mot. Dismiss Superseding Indictment, Sept. 19, 2012). The trial court's decision and order on the

motion to quash does not indicate that Ungacta joined in the motion. *See* Real Party in Interest's Br. Opp'n Pet. Writ Mand., App. A2 at 1-6 (Dec. & Order on Mot. to Quash, Nov. 30, 2012).

[25] However, the minute entry from the hearing on August 23, 2012, on the Superior Court's motion to quash indicates that Attorney Jeffrey Moots, appearing on behalf of Ungacta, did orally express that Ungacta would join in the Superior Court's motion. *See* Real Party in Interest's Supplement Br. Opp'n Pet. Writ Mand., Ex. A, 10:08:28 (Hr'g Mins., Superior Court Case No. CF0017-12, Aug. 23, 2012).

[26] Generally, delays caused by, or for the benefit of, the defendant constitute good cause for speedy trial purposes. *See, e.g.*, *Carver*, 1998 Guam 23 ¶ 16. However, in this case, the motion to quash was brought by a third party in receipt of a subpoena duces tecum and was based on the legal restrictions on what personnel information the Administrator of the Courts can release. Though it may have had the collateral result of protecting Ungacta's private employee information, it is not the type of motion that should be counted against Ungacta for speedy trial purposes, absent an express joinder by Ungacta in the motion. Therefore, the court does not agree with the People that the entire time during which the Superior Court's motion was pending should count against Ungacta's speedy trial clock.

[27] However, because it does appear that Ungacta, through Attorney Moots, did make an oral joinder in the motion on August 23, 2013, the court finds that the time from the oral joinder to the disposition of the motion to quash on November 30, 2012, is excludable time. *See* 8 GCA § 80.60(a)(3). As such, the third tolling period is August 22, 2012 (when Ungacta filed her motion to dismiss for speedy trial) to November 30, 2012,[8] with the clock stopping altogether on

[8] Ungacta also filed two motions to dismiss on speedy trial grounds, on August 22, 2012, and on September 19, 2012. Her clock stopped at the filing of her motion on August 22, 2012, and thus was already tolled on August 23, 2012, when she orally joined in the Superior Court's motion to quash. However, because the remaining time periods between Ungacta's oral joinder in the Superior Court's motion and the trial court's disposition of that

December 4, 2012, when Ungacta waived her speedy trial rights. A tally of all non-excluded days totals 70—which is ten days beyond the statutory time limit to bring Ungacta to trial.[9]

3. Whether there was an Abuse of Discretion

[28] The trial court, in its November 30, 2012 decision and order on speedy trial, clearly undertook an improper analysis—an error it acknowledged in its decision and order denying reconsideration. In finding that more than 60 non-excluded days had elapsed, it went on to find

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motion already encompass the time during which Ungacta's speedy trial motions were pending, the speedy trial motions do not factor into the speedy trial analysis in the instant case.

[9] To help clarify the speedy trial calculations referred to above, the court has prepared the following speedy trial table.

Date	Event	Asserted Time
February 8, 2012	Ungacta arraigned; speedy trial asserted.	
March 1, 2012 (signed February 29, 2012, but stamp filed March 1, 2012)	Ungacta's motion to dismiss for failure to provide exculpatory evidence to the grand jury.	**21 days** (excluding February 8 and March 1; note 2012 was a Leap Year)
March 7, 2012	People file Superseding Indictment.	
March 8, 2012	Superior Court's motion to quash subpoena (not a tolling event).	
April 4, 2012	Ungacta arraigned on Superseding Indictment; speedy trial asserted; Ungacta maintains that speedy trial has been asserted since original arraignment.	
April 11, 2012	Ungacta's motion to dismiss based on indictment's failure to provide a plain, concise, and definite written statement of essential facts constituting the crime charged.	**34 days** (excluding March 7 and April 11)
August 9, 2012	Decision and Order granting Ungacta's motion to dismiss in part and denying it in part.	
August 22, 2012	Ungacta's motion to dismiss for statutory speedy trial violation.	**12 days** (excluding August 9 and August 22)
August 23, 2012	Ungacta, through Attorney Moots, orally joins in Superior Court's motion to quash subpoena.	
August 31, 2012	People file Second Superseding Indictment.	
September 7, 2012	Ungacta arraigned; speedy trial asserted.	
September 19, 2012	Ungacta's second motion to dismiss for statutory speedy trial violation.	
November 30, 2012	Decision and Order denying motion to dismiss for statutory speedy trial violation	
December 4, 2012	Ungacta waives speedy trial	**3 days** (excluding November 30 and December 4)
Total non-excluded asserted time	**70 days**	

that there was no showing of prejudice on the part of Ungacta—a requirement that has no bearing when the pre-trial claim is for a statutory (as opposed to a constitutional) speedy trial violation. The case law from this court is clear on this point. *See Nicholson*, 2007 Guam 9 ¶ 24. A writ of mandate compelling dismissal on speedy trial grounds shall issue when "it 'clearly appears that there was no good cause shown' for a delay at the hearing, and the trial court had a 'clear positive legal duty [to] dismiss the indictment.'" *Id.* ¶ 8 (quoting *Gill*, 140 F.3d at 835).

[29] Therefore, because the trial court excluded all the possible "good cause" days it found applicable and *still* came up with a number that exceeded the number of days provided in 8 GCA § 80.60(a)(3), and because the court finds that indeed the number of non-excluded days is 70, then the trial court had a clear, positive legal duty to dismiss the indictment against Ungacta, and its failure to do so was an abuse of discretion.

V. CONCLUSION

[30] For the reasons set forth above, Ungacta's Petition for Writ of Mandate is hereby **GRANTED**. A peremptory writ of mandate hereby issues directing Respondent Superior Court of Guam to vacate its November 30, 2012 decision and order and to dismiss all charges pending against Ungacta in Superior Court Case No. CF0017-12. The determination, however, as to whether such dismissal shall be with or without prejudice is left to the trial court to make in the first instance. *See Nicholson*, 2007 Guam 9 ¶ 29.

Original Signed By: Robert J. Torres

ROBERT J. TORRES
Associate Justice

Original Signed By: Katherine A. Maraman

KATHERINE A. MARAMAN
Associate Justice

Original Signed By: F. Philip Carbullido

F. PHILIP CARBULLIDO
Chief Justice

I do hereby certify that the foregoing is a full true and correct copy of the original on file in the office of the clerk of the Supreme Court of Guam.

DEC 19 2013

By: Charlene T. Santos
Deputy Clerk
Supreme Court of Guam