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SUPREME COURT  
OF GUAM

**IN THE SUPREME COURT OF GUAM**

**PEOPLE OF GUAM,**  
Plaintiff-Appellant,

v.

**RAYMOND TORRES TEDTAOTAO,**  
Defendant-Appellee.

Supreme Court Case No.: CRA14-003  
Superior Court Case No.: CF0289-13

**OPINION**

**Cite as: 2014 Guam 33**

Appeal from the Superior Court of Guam  
Argued and submitted on July 29, 2014  
Hagåtña, Guam

Appearing for Plaintiff-Appellant:

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Appearing for Defendant-Appellee:

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

**CARBULLIDO, J.:**

[1] Plaintiff-Appellant People of Guam (“People”) appeal the trial court’s decision to grant Defendant-Appellee Raymond T. Tedtaotao’s motion to dismiss the indictment. The trial court found that the People violated 8 GCA § 45.10 by failing to bring Tedtaotao before a judge within 48 hours following his arrest, and also violated 8 GCA §§ 45.50 and 45.80 by failing to file the indictment within the applicable time period. The trial court dismissed the case pursuant to 8 GCA § 80.60 for failure to file the indictment within certain applicable time periods.

[2] On appeal, the People argue that the trial court erred in its application of the 48-hour time requirement in section 45.10 because Tedtaotao was never “subjected to any significant pretrial restraint of liberty” following his arrest in this case because his confinement was incident to a violation in an unrelated case. Appellant’s Br. at 8-17 (May 29, 2014). Tedtaotao maintains that the People’s position is untenable and contrary to the irrefutable record pertaining to Tedtaotao’s arrest in this case. We agree with the People that the trial court erred in applying section 45.10 to the facts of this case and reverse.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

[3] On March 13, 2013, Tedtaotao was arrested for the crimes he allegedly committed in this case – CF0289-13. At the time, Tedtaotao was in the custody of the Department of Corrections for contempt in a different case – CF0515-11. He was required to serve the contempt sanction in CF0515-11 until April 10, 2013. The Arrest Report for this case (CF0289-13), which was prepared by the arresting officer of the Guam Police Department (“GPD”), stated that Tedtaotao was arrested at the Hagåtña Precinct and “was later escorted to the [Hagåtña] Detention Facility

where he was booked and confined.” Record on Appeal (“RA”), tab 18 at Ex. A (Decl. Mot. Dismiss, Jan. 21, 2014).

[4] Tedtaotao was released on April 10, 2013. On May 28, 2013, Tedtaotao was indicted by grand jury in this case (CF0289-13). On May 29, 2013, Tedtaotao had his first appearance before a judge.

[5] Tedtaotao moved to dismiss the indictment on the basis that the People failed to bring him before a judge within 48 hours of his arrest in violation of 8 GCA § 45.10. The People contended that he was never subjected to any significant restraint of liberty in this case because he was released from custody in relation to the arrest made in this case, but was held in custody for the unrelated contempt conviction.

[6] After a hearing and oral arguments, the trial court issued a Decision and Order dismissing the case without prejudice. The trial court determined in part that Tedtaotao’s statutory right under section 45.10 was violated. The trial court also determined that the People were required to file an indictment at the very latest “26 days following [Tedtaotao’s] arrest” or face dismissal pursuant to section 80.60. RA, tab 28 at 11 (Dec. & Order, Mar. 4, 2014). The trial court dismissed the case pursuant to 8 GCA § 80.60<sup>1</sup> because the People did not file an information or return an indictment until 75 days after his arrest.<sup>2</sup>

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<sup>1</sup> Pursuant to section 80.60, “the court shall dismiss the criminal action if . . . an indictment [is not] returned within the time prescribed by [Sections 45.50 and 45.80].” 8 GCA § 80.60 (2005). Pursuant to section 45.50(b)(1), the defendant is entitled to a preliminary examination within ten days following the date of the first appearance. 8 GCA § 45.50(b)(1). Section 45.80 requires the prosecuting attorney to file the charging document, by indictment or information within fifteen days of the finding of an order finding probable cause in the preliminary examination. 8 GCA § 45.80; *see also People v. Petros*, 1986 WL 68513, at \*3. Therefore, the prosecuting attorney is required to file a charging document at the very latest 25 days after the first appearance. *Petros*, 1986 WL 68513, at \*3.

The People do not challenge that it was required to file a charging document within 25 days of the first appearance. Instead, the People argue that the Tedtaotao’s arrest did not trigger the 48-hour requirement under section 45.10.

<sup>2</sup> The People do not appeal and the parties do not address the trial court’s dismissal pursuant to section 80.60. Therefore, we do not address this issue on appeal.

[7] This appeal ensued.

## II. JURISDICTION

[8] This court has jurisdiction over this appeal pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 113-163 (2014)), 8 GCA § 130.20(5) (2005), and 7 GCA §§ 3107 and 3108(a) (2005).

## III. STANDARD OF REVIEW

[9] Issues of statutory interpretation are subject to *de novo* review. *Ada v. Guam Tel. Auth.*, 1999 Guam 10 ¶ 10. “[I]f . . . the court dismisses the indictment based on its interpretation of the governing statutes, that is a legal determination we review *de novo*.” *People v. Rios*, 2008 Guam 22 ¶ 8 (quoting *United States v. La Cock*, 366 F.3d 883, 888 (10th Cir. 2004)).

## IV. ANALYSIS

[10] The People argue that Tedtaotao’s right to a prompt judicial hearing of probable cause was not violated because there was no “significant pretrial restraint of liberty.” Appellant’s Br. at 9. Specifically, the People argue that Tedtaotao was arrested while already confined in another matter and no additional confinement or conditions of release attached upon his arrest in this matter. *Id.* at 12-13.

[11] The right to a judicial hearing of probable cause within 48 hours of arrest is a statutory and constitutional right. Pursuant to section 45.10:

(a) An officer making an arrest under a warrant or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before a judge of the Superior Court.

....

(c) The person arrested *shall* in all cases be taken before the judge within forty-eight (48) hours after the arrest, *except* that when the forty-eight (48) hour period expires, it is the burden of the government to demonstrate that a bona fide emergency *or* an extraordinary circumstance existed.

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8 GCA § 45.10 (2005). In addition, “[i]t is now well settled that the Fourth Amendment requires a prompt judicial determination of probable cause as a prerequisite to prolonged detention following arrest.” *People v. Petros*, 1986 WL 68513, at \*1 (citing *Gerstein v. Pugh*, 420 U.S. 103 (1975)). The state has a burden of providing a “fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest.” *Gerstein*, 420 U.S. at 125 (footnote omitted). The Supreme Court has ruled that “a jurisdiction that provides judicial determinations of probable cause within 48 hours of arrest will, as a general matter, comply with the promptness requirement of *Gerstein*.” *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991).

[12] The constitutional and statutory right to a judicial hearing on probable cause within 48 hours is triggered when a defendant is arrested. This court has not addressed the issue of whether the right to a hearing within 48 hours is triggered if the defendant is already in custody. However, other courts have found an “arrest” of a person who is already in custody does not trigger the 48-hour rule. In *State v. Harris*, an inmate at a county jail attempted to escape but was captured. *State v. Harris*, 497 N.W.2d 742, 744 (Wis. Ct. App. 1993). Six days later, the inmate was brought before the trial court for his initial appearance in the escape-related charges. *Id.* The inmate was convicted and appealed the charges. *Id.* at 743-44. On appeal, the inmate argued that an interval between his “arrest” and initial appearance violated his Fourth Amendment right to a judicial hearing of probable cause within 48 hours of his arrest. *Id.* at 744-46. In determining whether the inmate’s Fourth Amendment right was violated, the Wisconsin Court of Appeals looked at the purpose of 48-hour rule set forth in *County of Riverside*. *See id.* at 745-46. The court noted that the 48-hour rule is important because pretrial confinement may

“imperil [a] suspect’s job, interrupt his source of income, and impair his family relationships.” *Id.* at 746 (quoting *Cnty. of Riverside*, 500 U.S. at 52). The trial court found that these concerns do not apply to an arrestee who, like the inmate, was already in lawful custody at the time of the “arrest.” *Id.* Therefore, the court held that the 48-hour rule does not apply to persons already in the State’s lawful custody. *Id.*

[13] In addition, California has held that a defendant cannot be arrested for purposes of triggering the constitutional or statutory right to a prompt judicial hearing if the defendant is already in custody. Guam’s Code of Criminal Procedure is derived from the California Penal Code. *See* 8 GCA § 45.10, Note (2005) (“Section 45.10 is based on the . . . former §§ 825 and 847 – 849 [of the Guam Penal Code].”); *Forward* to Guam Civil and Penal Codes (1953) (“The original codes published under the Naval Government were adapted from the California codes of the same name. Although subsequent changes in the California statutes have resulted in many major differences between the two sets of codes today, they are still identical or comparable as to many sections. Consequently, there is a large body of court decisions and other legal literature available to aid in the interpretation of the various sections.”). Thus, California cases interpreting section 849 are persuasive, absent a compelling reason to deviate. *See Cruz v. Cruz*, 2005 Guam 3 ¶ 9 & n.2. California courts have found that a defendant already in custody cannot be rearrested. *See People v. Aguirre*, 5 Cal. Rptr. 477, 477 (Ct. App. 1960) (“Arrest means taking a person into custody. Defendant was already in custody. It is illogical to say that a prisoner in a state prison, already in custody, is arrested merely because he is turned over from one prison officer to another.”); *People v. Graham*, 18 Cal. Rptr. 134, 134 (Ct. App. 1960) (finding that a defendant was not “arrested” because he was already in custody, and therefore,

the defendant had no right to an arraignment within the time frame under the California Penal Code).

[14] Similarly, we find that the booking and confinement in this case did not trigger Tedtaotao's statutory or constitutional right to a judicial hearing of probable cause within 48 hours. Guam has enacted 8 GCA § 45.10 to codify the principles of *Gerstein*. *Petros*, 1986 WL 68513, at \*1. In *Gerstein*, the Supreme Court noted that a probable cause determination hearing is important to protect against "unfounded invasions of liberty and privacy." *Gerstein*, 420 U.S. at 112. The court noted that prompt judicial determination of probable cause is important because "[p]retrial confinement may imperil the suspect's job, interrupt his source of income, and impair his family relationships." *Id.* at 114.

[15] Here, Tedtaotao was already in custody at the time he was "booked and confined." RA, tab 28 at 2 (Dec. & Order). After he was "booked and confined" in this case, the People did not extend his confinement or attach additional conditions of release. *Id.* Instead he was released pursuant to the terms in the original arrest. In these circumstances, there is no additional invasion of liberty and privacy, and no additional concern that the "pretrial confinement may imperil [a] suspect's job, interrupt his source of income, and impair his family relationships." *Harris*, 497 N.W.2d at 746. Therefore, we find that because no Fourth Amendment concerns were implicated, there was no arrest that triggered Tedtaotao's constitutional and statutory right to a prompt judicial hearing.

## V. CONCLUSION

[16] We find that there is no arrest for the purpose of applying 8 GCA § 45.10 where the defendant is already in custody and the People do not extend the term of confinement or attach additional conditions of release. In this situation, the defendant's constitutional and statutory

right to a prompt judicial hearing of probable cause is not triggered. Therefore, we **REVERSE** and **REMAND** for proceedings not inconsistent with this opinion.

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

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

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

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 02 2014

By: **IMELDA B. DUENAS**  
Assistant Clerk of Court  
Supreme Court of Guam