IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,
Plaintiff-Appellant,

v.

RAYMOND TORRES TEDTAOTAO,
Defendant-Appellee.

Supreme Court Case No.: CRA14-012
Superior Court Case No.: CF0218-13-01

OPINION

Cite as: 2015 Guam 9

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

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

MARAMAN, J.:

[1] Plaintiff-Appellant the People of Guam ("the People") appeal from the trial court's sentencing of Defendant-Appellee Raymond T. Tedtaotao. The People argue that the maximum sentence that Tedtaotao could receive for Attempted Murder is life imprisonment, rather than 20 years. Alternatively, the People argue that Tedtaotao could have received an extended sentence of life imprisonment as a persistent offender pursuant to 9 GCA § 80.38. For the reasons set forth below, we affirm the trial court's sentence.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] Tedtaotao was indicted by a grand jury for Attempted Murder; Guilt by Complicity to Commit Attempted Murder; First Degree Robbery (as a First Degree Felony); Aggravated Assault (as a Second Degree Felony); and Burglary (as a Second Degree Felony). After a jury trial, he was found guilty of Attempted Murder (as a First Degree Felony); First Degree Robbery (as a First Degree Felony); Aggravated Assault (as a Second Degree Felony); and Burglary (as a Second Degree Felony). After the verdict, Tedtaotao waived his right to a speedy sentencing under 8 GCA § 120.14(b)(2).

[3] At the sentencing hearing, the trial court imposed upon Tedtaotao one life term for each of the First Degree Felonies and 20 years for Burglary (as a Second Degree Felony). For sentencing purposes, the court merged the offense of Aggravated Assault with the offense of Attempted Murder. The court derived these terms of imprisonment from the extended terms set

forth in 9 GCA § 80.32,[1] which would apply to a "persistent offender" as defined under the provisions of 9 GCA § 80.38,[2] following a finding by the court of several qualifying factors.

[4] At a subsequent Restitution Hearing, the court *sua sponte* informed the parties that it was reconsidering the legality of imposing an extended term upon Tedtaotao in light of the Guam Supreme Court's opinion in *People v. Muritok*, 2003 Guam 21. The court ordered the parties to provide supplemental briefs regarding the implications of *Muritok* to the case at bar.

[5] The court then held a second Sentencing Hearing. Upon reviewing the parties' briefs and arguments, the court modified Tedtaotao's sentence. The court imposed upon Tedtaotao the maximum sentence of 20 years for Attempted Murder (as a First Degree Felony);[3] the maximum sentence of 25 years for First Degree Robbery (as a First Degree Felony); and the maximum

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[1] Title 9 GCA § 80.32 provides:

> In the cases designated in §§ 80.38 and 80.42, a person who has been convicted of a felony may be sentenced to an extended term of imprisonment as follows:
>
> (a) In the case of a felony of the first degree, for a sentence of life imprisonment;
>
> (b) In the case of a felony of the second degree, the court may impose a sentence of not less than five (5) years and not more than twenty (20) years; or
>
> (c) In the case of a felony of the third degree, the court may impose a sentence of not less than three (3) years and not more than ten (10) years.

9 GCA § 80.32 (2005).

[2] Title 9 GCA § 80.38 provides, in pertinent part:

> The court may sentence a person who has been convicted of a felony to an extended term of imprisonment if it finds one or more of the grounds specified in this Section. The finding of the court shall be incorporated in the record:
>
> (a) The offender is a persistent offender whose commitment for an extended term is necessary for protection of the public. The court shall not make such a finding unless the offender is over twenty-one (21) years of age and has previously been convicted as an adult of two (2) felonies or of one (1) felony and two (2) misdemeanors.
>
> . . . .

9 GCA § 80.38(a) (2005).

[3] The trial court ruled that Attempted Murder (as a First Degree Felony) "is punishable by not less than five (5) and not more than twenty (20) years of imprisonment under 9 GCA § 80.30(a)." RA, tab 134 at 8 (Dec. & Order re: Extended Term Sentence, June 19, 2014).

sentence of 10 years for Burglary (as a Second Degree Felony). Aggravated Assault (as a Second Degree Felony) was merged with the charge of Attempted Murder (as a First Degree Felony) pursuant to 9 GCA § 1.22(a) and 8 GCA § 105.58(3). The court imposed consecutive sentences, for a total term of 55 years of incarceration.

II. JURISDICTION

[6] We have jurisdiction over this appeal pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 113-296 (2014)) and 7 GCA §§ 3107 and 3108(a) (2005).

III. STANDARD OF REVIEW

[7] Issues of statutory interpretation are reviewed *de novo*. *People v. Gutierrez*, 2005 Guam 19 ¶ 13; *People v. Flores*, 2004 Guam 18 ¶ 8; *Ada v. Guam Tel. Auth.*, 1999 Guam 10 ¶ 10. The court's duty is to interpret statutes in light of their terms and legislative intent. *Carlson v. Guam Tel. Auth.*, 2002 Guam 15 ¶ 46 n.7. "Absent clear legislative intent to the contrary, the plain meaning prevails." *Sumitomo Constr., Co. v. Gov't of Guam*, 2001 Guam 23 ¶ 17.

[8] The trial court's imposition of a sentence is reviewed for an abuse of discretion. *People v. Camacho*, 2009 Guam 6 ¶ 14; *People v. Diaz*, 2007 Guam 3 ¶ 10; *People v. Superior Court (Chiguina)*, 2003 Guam 11 ¶ 12. "'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.'" *Gutierrez*, 2005 Guam 19 ¶ 13 (quoting *Town House Dep't Stores, Inc. v. Ahn*, 2003 Guam 6 ¶ 27).

IV. ANALYSIS

[9] The People's appeal in this matter is limited to issues regarding Tedtaotao's sentence. First, the People argue that the maximum sentence that Tedtaotao could receive for Attempted

Murder is life imprisonment, rather than 20 years. Second, the People argue that Tedtaotao could have received an extended sentence of life imprisonment as a persistent offender pursuant to 9 GCA § 80.38.

A. The Maximum Sentence for Attempted Murder

[10] The People first argue that the maximum sentence for Attempted Murder is life imprisonment. Specifically, the People argue that 9 GCA § 13.60(a) should be read together with 9 GCA § 16.40(b) to stand for the proposition that a conviction for Attempted Murder exposes an offender to the same penalty as that for Murder. Appellant's Br. at 9 (Sept. 2, 2014). The People concede that "[r]esearch has failed to uncover any authority directly contradicting the trial court's ruling that 9 GCA § 13.60(b)'s specific designation of attempted murder as a first degree felony is subject to 9 GCA § 80.30's mandatory sentencing range of 5 to 20 years in prison." *Id.* at 9. Nevertheless, the People maintain that the genesis and history of section 13.60, as well as public policy, favors interpreting section 13.60 as allowing the imposition of a life sentence for the crime of Attempted Murder. *Id.* at 11.

[11] However, the People's arguments in favor of reading section 13.60 as allowing a maximum sentence of life imprisonment do not extend beyond policy arguments. We are wary of such arguments. In *Carlson v. Guam Telephone Authority*, we noted that "our duty is to interpret statutes in light of their terms and legislative intent. Policy arguments . . . are more properly directed to the legislature. Courts are not in the business of judicial legislation." 2002 Guam 15 ¶ 46 n.7.

[12] Instead, our analysis focuses on the interpretation of the statutory scheme for Attempted Murder. In cases involving statutory construction, we must first look to the language of the

statute itself. *Sumitomo*, 2001 Guam 23 ¶ 17. Absent clear legislative intent to the contrary, the plain meaning of the statute prevails. *Id.* However, the plain meaning of statutory language "'need not be followed where the result would lead to absurd or impractical consequences, untenable distinctions, or unreasonable results.'" *Id.* (quoting *Bowlby v. Nelson*, Civ. No. 83-0096A, 1985 WL 56583, at *2 (D. Guam App. Div. Sept. 5, 1985)). Absurdity may result when a statute contains language that is broader and more sweeping than that which the legislature intended. *Id.* "In such cases, the court can interpret the broad language in a limited fashion in an effort to effectuate legislative intent." *Id.* Additionally, "in determining legislative intent, a statute should be read as a whole, and . . . courts should construe each section in conjunction with other sections." *Id.* Accordingly, "[i]n expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." *Id.* (quoting *Kelly v. Robinson*, 479 U.S. 36, 43 (1986)).

[13] The applicable statutes read, in relevant part, as follows:

> **§ 13.60. Attempt, Solicitation, Conspiracy: Degree of Offense Stated.**
>
> (a) Except as otherwise provided in this Section attempt, solicitation and conspiracy are crimes of the same grade and degree as the most serious crime which is attempted or solicited or is an object of the conspiracy.
>
> (b) Attempted murder, and solicitation and conspiracy to commit murder are felonies of the first degree.

9 GCA § 13.60(a)-(b) (2005).

> **§ 80.30. Duration of Imprisonment.**
>
> Except as otherwise provided by law, a person who has been convicted of a felony may be sentenced to imprisonment as follows:
>
> (a) In the case of a felony of the first degree, the court shall impose a sentence of not less than five (5) years and not more than twenty (20) years[.]

9 GCA § 80.30(a) (2005).

> **§ 16.40. Murder Defined.**
>
> . . . .
>
> (b) Murder is a felony of the first degree, but a person convicted of murder shall be sentenced to life imprisonment notwithstanding any other provision of law; provided, however, that any person convicted of murder shall be eligible for parole after serving fifteen (15) years as provided in § 80.72 of this Title and no part of said sentence shall be suspended; provided, further, that any person convicted of murder shall also *not* be eligible for work release or educational programs outside the confines of prison.

9 GCA § 16.40(b) (2005).

[14] The plain language of the statutes indicates that Attempted Murder is punishable by a maximum of 20 years imprisonment. Title 9 GCA § 13.60(a) provides, "*Except as otherwise provided in this Section* attempt, solicitation and conspiracy are crimes of the same grade and degree as the most serious crime which is attempted or solicited or is an object of the conspiracy." 9 GCA § 13.60(a) (emphasis added). The very next subsection, section 13.60(b) provides such an exception: "Attempted murder, and solicitation and conspiracy to commit murder are *felonies of the first degree*." 9 GCA § 13.60(b) (emphasis added). In turn, 9 GCA § 80.30 sets the maximum sentence for felonies of the first degree at 20 years imprisonment. 9 GCA § 80.30(a).

[15] Title 9 GCA § 16.40(b) specifically provides that Murder is a first-degree felony punishable by life-imprisonment, but makes no mention of Attempted Murder. It seems logical to conclude that if the legislature intended Attempted Murder to be punished in the same manner as Murder, the legislature would not have carved out a separate subsection for Attempted Murder in section 13.60(b) of the statute. Thus, when section 13.60(b) is read together with 9 GCA §

80.30, the plain language indicates that Attempted Murder is punishable by a sentence of not less than 5 years and not more than 20 years.

[16] Moreover, this court need not deviate from a plain reading of the statutory scheme because "absurd consequences," as defined by *Sumitomo*, do not result. *See Sumitomo*, 2001 Guam 23 ¶ 17. The language of section 13.60(b) is not broader or more sweeping than that which the legislature intended. *See id.* Rather, the applicability of the subsection is specifically limited to attempt, solicitation and conspiracy to commit murder. Thus, we hold that a plain reading of section 13.60 supports the trial court's finding that Attempted Murder is to be punished by a maximum of 20 years imprisonment.

B. Extended Term Sentencing

[17] Second, the People argue that the trial court could have imposed a life sentence on Tedtaotao for Attempted Murder by finding that Tedtaotao qualified for an extended sentence as a "persistent offender" as defined in 9 GCA § 80.38. The People contend that such an extended sentence does not violate this court's holding in *People v. Muritok*, 2003 Guam 21, that 9 GCA § 80.38 is unconstitutional because of the United States Supreme Court's decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

[18] *Apprendi* involved a defendant who pleaded guilty to a crime that carried a prison term of five to ten years. *Id.* at 469-70. Subsequently, the trial judge found that the defendant's conduct violated New Jersey's hate crime statute because it was racially motivated and imposed a twelve-year sentence, despite the ten-year maximum. *Id.* at 471. The Supreme Court set aside the enhanced sentence and held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to

a jury, and proved beyond a reasonable doubt." *Id.* at 490. The Court found that the statute's labeling of a hate crime as a "sentence enhancement," rather than as a separate criminal act, was irrelevant for constitutional purposes. *Id.* at 478.

> As a matter of simple justice, it seems obvious that the procedural safeguards designed to protect [the defendant] from unwarranted pains should apply equally to the two acts that New Jersey has singled out for punishment. Merely using the label "sentence enhancement" to describe the latter surely does not provide a principled basis for treating them differently.

Id. at 476. The Court further explained that:

> when the term "sentence enhancement" is used to describe an increase beyond the maximum authorized statutory sentence, it is the functional equivalent of an element of a greater offense than the one covered by the jury's guilty verdict. Indeed, it fits squarely within the usual definition of an "element" of the offense.

Id. at 494 n.19 (citation omitted).

[19] Applying the Supreme Court's holding in *Apprendi*, this court held that 9 GCA § 80.38 is unconstitutional because it impliedly removes from the jury and prescribes to the court the duty to assess the facts that increase the prescribed range of penalties to which a criminal defendant is exposed.[4] *Muritok*, 2003 Guam 21 ¶ 47. Furthermore, this court clarified that:

> the only fact found in the statute that is excepted from *Apprendi* is found in subsection (a), which refers to a defendant's previous conviction "as an adult of two (2) felonies or of one (1) felony and two (2) misdemeanors." The remainder of the "facts" in the statute, however, must be proven to a jury beyond a reasonable doubt, in compliance with *Apprendi*.

Id. ¶ 46 (quoting 9 GCA § 80.38 (1996)).

[20] Since *Muritok*, the United States Supreme Court has revisited the issue presented in *Apprendi* on numerous occasions. *See, e.g.*, *Oregon v. Ice*, 555 U.S. 160 (2009); *Cunningham v.*

[4] Title 9 GCA § 80.38 reads in relevant part: "*The court* may sentence a person who has been convicted of a felony to an extended term of imprisonment *if it finds* one or more of the grounds specified in this Section. *The finding of the court* shall be incorporated in the record. . . ." 9 GCA § 80.38 (2005) (emphases added).

California, 549 U.S. 270 (2007); *United States v. Booker*, 543 U.S. 220 (2005); *Blakely v. Washington*, 542 U.S. 296 (2004).

[21] In *Blakely*, the defendant pleaded guilty to second degree kidnapping, a class B felony punishable by a maximum sentence of 53 months. 542 U.S. at 298. However, pursuant to Washington State law, the trial judge imposed an exceptional sentence of 90 months after a judicial determination that the defendant acted with "deliberate cruelty." *Id.* The State contended that no *Apprendi* violation existed, arguing that the relevant statutory maximum was not 53 months, but the 10-year statutory maximum for class B felonies. *Id.* at 303. In rejecting this argument, the Court clarified:

> [T]he "statutory maximum" for *Apprendi* purposes is the maximum sentence a judge may impose *solely on the basis of facts reflected in the jury verdict or admitted by the defendant*. In other words, the relevant "statutory maximum" is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose *without* any additional findings.

Id. at 303-04 (citations omitted). The Court further explained that under the State's reasoning, "the jury's verdict alone does not authorize the sentence. The judge acquires that authority only upon finding some additional fact." *Id.* at 305. Thus, the Court held that Washington's sentencing scheme violated the defendant's right to have a jury find the existence of a fact that permitted a sentence greater than the statutory maximum. *Id.* at 301-05.

[22] In *Booker*, the defendant was convicted of possession with intent to distribute crack cocaine. 543 U.S. at 226. The facts found by the jury mandated a base range of 210 to 262 months imprisonment under the Federal Sentencing Guidelines ("the Guidelines"). *Id.* The trial judge could not exceed that range without undertaking additional fact finding. *Id.* The trial judge found by a preponderance of the evidence that the defendant possessed an amount of drugs

in excess of the amount determined by the jury's verdict and sentenced the defendant to 360 months imprisonment, in accordance with a higher Guidelines range. *Id.* The Court held the sentence unconstitutional under the Sixth Amendment. *Id.* at 232. The Court, however, acknowledged that the trial judge's sentence would be constitutional if the Guidelines were advisory:

> If the Guidelines as currently written could be read as merely advisory provisions that recommended, rather than required, the selection of particular sentences in response to differing sets of facts, their use would not implicate the Sixth Amendment. We have never doubted the authority of a judge to exercise broad discretion in imposing a sentence within a statutory range. Indeed, everyone agrees that the constitutional issues presented by these cases would have been avoided entirely if Congress had omitted from the [federal Sentencing Reform Act] the provisions that make the Guidelines binding on district judges . . . . For when a trial judge exercises his discretion to select a specific sentence within a defined range, the defendant has no right to a jury determination of the facts that the judge deems relevant.

Id. at 233 (citations omitted). Thus, the Court held that facts prompting an elevated sentence under the then-mandatory Guidelines must be submitted to a jury and proved beyond a reasonable doubt. *Id.* at 244.

[23] *Cunningham* involved a defendant who was convicted of an offense punishable by imprisonment of six, twelve, or sixteen years under California's determinate sentencing law. 549 U.S. at 275. The law required the trial judge to sentence the defendant to the middle term unless the judge found one or more additional aggravating facts. *Id.* The trial judge found by a preponderance of the evidence six aggravating facts, including "the particular vulnerability of [the] victim, and [the defendant's] violent conduct, which indicated a serious danger to the community." *Id.* Accordingly, the trial judge sentenced the defendant to the upper term of sixteen years. *Id.* at 276. However, the Court found the sentence unconstitutional and held that

California's determinate sentencing law, which "plac[ed] sentence-elevating factfinding within the judge's province," violated the *Apprendi* rule. *Id.* at 274, 288.

[24] In *Ice*, the defendant was convicted of multiple crimes. 555 U.S. at 165. Oregon law gave the trial judge discretion to impose consecutive sentences upon making certain judicial findings. *Id.* at 165-66. The trial judge made such findings and imposed consecutive sentences. *Id.* In upholding the consecutive sentences, the Court noted that "[t]he historical record demonstrates that the jury played no role in the decision to impose sentences consecutively or concurrently. Rather, the choice rested exclusively with the judge." *Id.* at 168. Thus, the Court held that "[t]here is no encroachment here by the judge upon facts historically found by the jury, nor any threat to the jury's domain as a bulwark at trial between the State and the accused." *Id.* at 169. Accordingly, the Court held that the Oregon statute, which "assigns to judges a decision that has not traditionally belonged to the jury," does not violate the *Apprendi* rule.[5] *Id.* at 172.

[25] At sentencing, the trial court used its discretion in imposing the maximum possible sentence permissible by law for each of Tedtaotao's convictions. Moreover, the sentence imposed was a legal, proper sentence under the statutory scheme for each of Tedtaotao's offenses. Furthermore, the People conceded, both in their brief and at oral argument, that the sentence imposed was a legal sentence under Guam law. *See* Appellant's Br. at 8-9; *see also* Oral Argument at 10:07:53-10:08:10 (Oct. 29, 2014). Thus, we find that the trial court did not abuse its discretion in refraining from imposing an extended sentence on Tedtaotao.

[5] In light of the Supreme Court's subsequent rulings on the *Apprendi* issue since this court's decision in *Muritok*, it may be worthwhile to revisit the constitutionality of 9 GCA § 80.38. There may be other factual findings, besides the fact of a prior conviction, that a judge can make under 9 GCA § 80.38 without violating *Apprendi* and its progeny. However, this issue is not essential to our holding in this case, and we decline to address it at this time. *Muritok* was (and continues to be) the law at the time the trial court imposed Tedtaotao's sentence. As for those findings required by *Apprendi* to be made by a jury beyond a reasonable doubt, courts should employ precautionary measures, such as bifurcation of issues, so as not to taint the jury verdict.

V. CONCLUSION

[26] We hold that the maximum sentence that Tedtaotao could receive for a conviction of Attempted Murder is 20 years imprisonment. Further, we hold that the trial court did not abuse its discretion in refraining from imposing an extended term sentence pursuant to 9 GCA § 80.38. Therefore, we **AFFIRM** the trial court's sentencing of Tedtaotao.

Original Signed By: F. Philip Carbullido

F. PHILIP CARBULLIDO
Associate Justice

Original Signed By: Katherine A. Maraman

KATHERINE A. MARAMAN
Associate Justice

Original Signed By: Robert J. Torres

ROBERT J. TORRES
Chief Justice