IN THE SUPREME COURT OF GUAM
TERRITORY OF GUAM

PEOPLE OF THE TERRITORY OF GUAM
Appellant,
vs.
DWAYNE S. QUENGA
Appellee.

Criminal Case No. CRA96-005
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Appeal from the Superior Court of Guam

Argued and Submitted 19 December 1996
Agana, Guam

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OPINION

BEFORE: PETER C. SIGUENZA, Chief Justice, MONESSA G. LUJAN[1] and JOSE I. LEON GUERRERO[2], Associate Justices.

SIGUENZA, C.J.:

I. BACKGROUND

[1] The Defendant-Appellant, Dwayne S. Quenga, was sixteen years of age at the time he was indicted by a Territorial Grand Jury on October 25, 1995 for two counts of Second Degree Robbery under 9 GCA '40.20(a)(3). He was also sixteen on the date of the alleged offenses. Pursuant to 9 GCA '40.20(b), this offense is a second degree felony. 19 GCA '5106(a) directs that minors are to be tried as adults if they are charged with a felony of the first or second degree alleged to have occurred between their sixteenth and eighteenth birthdays. Accordingly, Quenga was arraigned in the Superior Court of Guam and faced prosecution as an adult. Prior to trial his counsel brought a motion seeking a hearing where a Superior Court Judge would determine whether he might be more appropriately adjudicated as a juvenile offender and then be removed to a proceeding under the jurisdiction of the Family Court. The trial judge hearing the motion concluded that there was no basis in law for the provision of such a

[1]Justice Lujan heard argument in this matter and participated in the resolution of this matter, but due to her untimely death was not available to sign the Opinion.

[2]Justice Leon Guerrero is a Part-Time Associate Justice designated by the Chief Justice to sit on this panel because of the unavailability of Full-Time Justice Janet Healy Weeks.

removal hearing and declined to consider the merits of the removal request. This appeal comes forward seeking interlocutory review of the trial judge›s determination.

[2] There are two issues presented here. There is the question of whether an individual situated as Quenga is entitled to judicial review of his prosecution as an adult and the possible removal of his case to Family Court if it is found inappropriate. There is also the threshold issue of whether this appeal is ripe for review, i.e., whether this Court has jurisdiction to hear the matter as an interlocutory criminal appeal[3].

[3]Although the parties were required to address the issue of our jurisdiction in their briefs and in oral argument, the People made no effort to contest the issue; instead attempting to stipulate that we have jurisdiction to decide this interlocutory challenge. The failure of the parties to address the question of jurisdiction in a meaningful manner has required the Court to determine it without benefit of their positions as to the specifics discussed herein.

II. Issues presented for Review

III. ANALYSIS

[3] We first consider whether our jurisdiction is appropriately exercised over this matter. Interlocutory appeals are generally not available in criminal cases. 8 GCA '130.15 delineates those matters which may be appealed by a criminal defendant. With the exception of subsection (d), which addresses bail determinations, only post-conviction rulings (including a denial of a motion for new trial) are listed as reviewable. In addition to the express restrictions 0placed on criminal appeals by section 130.15 is the general rule that only final orders may be appealed. *See, e.g., People of the Territory of Guam v. Lefever*, 454 F.2d 270, 271 (9th Cir. 1972); *People of the Territory of Guam v. Cruz*, 913 F.2d 748, 750 (9th Cir. 1990). The Guam legislature incorporated the finality rule when it set the parameters of this Court›s jurisdiction in 7 GCA '3108(a).

[4] However, the Legislature also saw fit to give this Court the discretion to review interlocutory appeals under limited circumstances. 7 GCA ' 3108(b) provides:

> (b) Interlocutory review. Orders other than final judgments shall be available to immediate appellate review as provided by law and in other cases only at the discretion of the Supreme Court where it determines that resolution of the questions of law on which the order is based will:
>
> (1) Materially advance the termination of the litigation or clarify further proceedings therein;
> (2) Protect a party from substantial and irreparable injury; or
> (3) Clarify issues of general importance in the administration of justice.

[5] The question is whether we should exercise our discretion, on any or several of these bases, to grant appellate review of the issue presented. For reasons discussed below, we conclude that we should not.

[6] In determining whether discretionary review is desirable we observe that the issue presented here is very closely related to a particular question which the Guam Legislature has affirmatively barred from interlocutory review. As the Appellant characterizes his claim, he wants to be provided a Ade-certification@ hearing that could permit his removal from a criminal action to a juvenile proceeding. There is no statutory basis for such a hearing and therefore no statutory description of what appeal might be allowed on its denial. There is, however, an absolute timing restriction placed on appeals from the obverse situation, certification hearings where a minor is discretionarily ordered to stand trial as an adult. 19 GCA '5125 (b) states in relevant part: AA child may appeal from a decision of the Family Division to certify him as an adult, but such appeal may be taken only if the child is convicted of the

underlying offense.@

[7] On its face this provision reflects an apparent understanding that such orders should not be considered final until after a conviction occurs and that the proceedings should not be delayed to accommodate an interlocutory appeal. The circumstances giving rise to this language supports this interpretation.

[8] The language quoted above was enacted through Guam Public Law 17-12, which became law on June 23, 1983. The drafter›s comments accompanying the section indicate that although subsection (b) was intended to express current law, it was deliberately aimed at avoiding inconsistent court decisions Awhich may vary from time to time@ and to Amake clear the route and availability of appeals form [sic] such decisions.@ Though not addressed by name in those comments, historical context suggests that one of the cases that provided a Avarying@ interpretation of the availability of appeals was *People of the Territory of Guam v. Kingsbury*, 649 F.2d 740 (9th Cir. 1981). In that case the Court of Appeals for the Ninth Circuit first determined that it had jurisdiction to review the Appellate Division of the District Court of Guam›s denial of a petition for a Writ of Mandate sought before trial, which would have directed dismissal of the minor›s indictment below and compelled his adjudication as a juvenile. The *Kingsbury* panel focused, under prevailing federal standards governing interlocutory review, on whether pre-trial review was available on the basis that post-conviction appeal would be barred:

> AAppealability here therefore turns on whether Guam law requires a juvenile to question the propriety of standing trial as an adult before the trial takes place and precludes him from raising the issue on post-conviction appeal. The relevant Guam statutes and precedent do not provide a clear answer to this question. Guidance can be found, however, by examining judicial interpretations of similar statutes in other

jurisdictions.@ **Id.** at 742.

[9] Noting that the other jurisdictions whose language regarding the juvenile certification process was as broadly worded as Guam›s permitted pre-trial review of certification, two of the three judges on the panel concluded that jurisdiction obtained. *Id*. The third judge dissented on this issue and filed a separate opinion. *Kingsbury*, 649 F.2d at 744 (9th Cir. 1981)(Poole, J., dissenting). Significantly, Judge Poole›s dissent emphasized that the Ninth Circuit had previously addressed the identical issue in *Guam v. Lefever*, 454 F.2d 270 (9th Cir. 1972)(per curiam) and had concluded there that such a question was not appealable before trial because post-conviction review was available. *Kingsbury*, 649 F.2d at 745.

[10] It appears that the comment to 19 GCA '5125 which explains the purpose of Guam Public Law 17-12 in amending the section, and suggests that judicial determinations regarding interlocutory appeals by minors Avary from time to time@, was informed by the relationship between the *Kingsbury* and *Lefever* decisions. It also appears that the Guam legislature made a considered decision that it wished to preclude pre-trial review of certification issues and limit appeal of that process to post-conviction procedures. Post-conviction relief is made available as the sole avenue of attack on a juvenile›s discretionary certification to stand trial as an adult.

[11] Having concluded that the Guam Legislature has specifically directed that juvenile certification determinations are appealable only after conviction, we now proceed to consider whether any of the three bases for our discretionary interlocutory review support our exercise of pretrial review in the instant matter.

[12] We choose to address subparagraphs (1) and (3) of 7 GCA ' 3108(b) first, as both of these address concerns of judicial efficiency in permitting interlocutory appeals in specific circumstances.

Section 3108(b)(1) allows us to review lower court determinations where we Adetermine that resolution of the [question] of law on which the order is based will: (1) Materially advance the termination of the litigation or clarify further proceedings therein@. Under the present circumstances we find it unnecessary to provide guidance or clarification in the lower court›s handling of this matter. The trial court has denied the motion to provide a Ade-certification@ hearing and has maintained the course of the matter toward a criminal trial in the Superior Court. This is clearly the direction charted by the Guam Legislature when it passed the Family Court Act as Public Law 17-12. Moreover, we find it unnecessary to formally address the issue and iterate this as a holding, because existing precedent supports it with sufficient clarity.

[13] In *People of the Territory of Guam v. Paul Herradura*, DCA Crim. No. 85-00023A, 1986 WL 68910, (D. Guam App. Div. July 7, 1986), the Appellate Division of the District Court of Guam addressed much the same question, that of whether the automatic certification of minors sixteen (16) years or older who are charged with first or second degree felonies, was properly enacted by the Guam Legislature. More specifically, that Court was asked to resolve whether such provisions were unduly vague, and to the extent that they expressed a clear intention to have the designated minors tried as adults, whether these violated the due process and equal protection clauses of the federal constitution. That panel found in the negative as to all issues. In the course of considering the questions presented the Appellate Division found that the intent of 19 GCA '5106(a) was clear on its face, and that its result created no conflict with the United States Constitution. As that case notes, the Legislature intended automatic certification to occur in cases such as this and it clearly desired that the minor be tried as an adult. We conclude that *Herradura*, a well reasoned decision that has not been challenged by the Appellant, provides sufficient guidance to the Superior Court that no interlocutory appeal is justified on the basis of our providing guidance to the course of this

proceeding below[4].

[4]It may go without saying, but this Court does not recognize the decisions of the Appellate Division as controlling our construction of law. We consider its opinions as precedent that is binding upon the trial courts of Guam, but these decisions, like those of the Court of Appeals, are considered persuasive authority when we consider an issue. In providing for a Supreme Court of Guam, Congress adopted a model that puts Guam on a par judicially with the several States, which grants this Court the authority to interpret Guam›s laws. The decisions of this Court will be reviewed in due time and course by the Supreme Court of the United States alone. *See* 48 U.S.C. '1424-2 (1994) (also providing a period of fifteen (15) years during which the Ninth Circuit Court of Appeals retains certiorari review of this Court›s decisions). While we note our authority to modify pre-existing interpretations of our laws that have been determined by federal tribunals, the Appellate Division›s opinion in *Herradura* does not present, on its face, any occasion for reconsideration. It appears well supported in law and well reasoned. The Appellant did not invite our attention to *Herradura* as a wrongly decided precedent. It should be underscored that the creation of the Supreme Court of Guam did not erase pre-existing case law. Precedent that was extant when we became operational continues unless and until we address the issues discussed there. We will not divert from such precedents unless reason supports such deviation. We choose to let *Herradura* stand, without our reaching the merits of the issue presented, because we see no reason to reconsider its conclusions.

[14] Where section 3108(b)(1) permits us to address interlocutorily issues that may materially assist in the resolution of a particular case, 3108(b)(3) allows us to use the same opportunity to address Aissues of general importance in the administration of justice@. For the reasons noted above, we find no need to accept jurisdiction of this appeal on this basis. Not only does *Herradura* sufficiently cover this issue, but there appears to be no reason why, for the purposes of general court administration, we could not address this issue in the course of post-conviction review if and when the occasion arises.

[15] More to the point is the provision of 7 GCA '3108(2) which allows us to exercise our interlocutory review authority to Aprotect a party from substantial and irreparable injury@. The Appellant appears to have relied upon this concept in filing his appeal as an Aemergency@ matter. The concern expressed by the Appellant has been that once he turned eighteen (18) years of age on January 24, 1997 that he would no longer come under the jurisdiction of the Family Court and would lose the ability to seek transfer to that forum.

[16] Even assuming this to be true, and we do not necessarily agree with the assertion, it does not raise a specter of irreparable harm that would lead us to review the merits of this appeal on an emergency or even interlocutory basis. The right being claimed here is the right to avoid adjudication and punishment as an adult. Post-judgement relief is available that would provide meaningful redress. A review of other jurisdictions› treatment of somewhat similar cases suggests a range of possible orders through which this Court could cure, after conviction, any harm suffered by Appellant Quenga.

[17] The Supreme Court of California concluded, in considering a Petition for a Writ of Habeas Corpus brought by a petitioner who was 15 years and 364 days old on the date of his alleged offenses, but who had been tried and convicted as an adult, that his age precluded his prosecution as an adult offender

and afforded relief by simply converting the criminal conviction to a juvenile adjudication and ordering that a disposition hearing be conducted. *In re Harris*, 855 P.2d 391, 413 (Cal. 1993). In granting this relief the California Supreme Court acknowledged that the petitioner was no longer a juvenile; at the time of oral argument he was noted to be over 24 years old. **Id.**

[18] The Oklahoma Courts have granted relief in several instances to minors who claimed to have been improperly adjudicated as adults. In *S.H. v. State*, 555 P.2d 1050 (Okla.Cr. 1976) *overruled on other*

[19] In *Gilley v. State*, 848 P.2d 578, 579 (Okla. 1992), the Supreme Court of Oklahoma addressed a post-conviction appeal where the defendant-appellant had been automatically certified as an adult offender, similar to Quenga›s circumstances, based upon his age (17) and the seriousness of the charged offense. Appeal was taken on the basis that Gilley had not been advised of his right to request Areverse certification@ as a child to the juvenile system, a procedure which Oklahoma, unlike Guam, has statutorily provided in such circumstances. The Oklahoma *grounds by State ex rel. Coats v. Rakestraw*, 610 P.2d 256 (Okla.Cr. 1980), a discretionary certification was ordered but the record of the certification proceeding indicated that the judge had failed to enter several ultimate findings necessary to support such certification under Oklahoma law. The matter was remanded for a new certification hearing because the minor was still under 21 years of age and the juvenile court retained jurisdiction over the minor that it had previously obtained. **Id**. at 1054.

Supreme Court found error but did not reverse at that point. Rather it remanded for a hearing to determine whether, had a reverse certification hearing been held, Gilley would have succeeded in such an application. **Id.** at 580[5].

[20] Other courts have indicated that, where the record in a post-

[5]Neither Gilley›s then current age, nor the relief that might ultimately have been ordered if the hearing resulted in a finding favorable to Gilley, is discussed there.

conviction criminal appeal establishes on its face that a juvenile court would certainly have transferred the case for adult prosecution, had it had the opportunity to properly consider the issue, that an appellate court need not remand the matter for a re-constructed certification hearing, even where the certification process was erroneous. **E.g**., *State in re Schreuder*, 649 P.2d 19, 25 (Utah 1982)(*citing Brown v. Cox*, 481 F.2d 622 (en banc)(4th Cir. 1973), *cert. denied*, 414 U.S. 1136, 94 S.Ct. 881, 38 L.Ed.2d 761 (1974)).

[21] Assuming arguendo that Quenga obtains a determination on **[22]** Assuming further that the Appellant was ultimately determined to have been more properly adjudicated as a juvenile offender, relief would certainly be available in at least one of three forms. Following California›s approach in *Harris*, this Court could conceivably direct that his judgment of conviction be reformed to reflect that which could have been entered against him in a juvenile proceeding[6]. If Quenga were still post-conviction appeal that it was error to deny him a reverse certification hearing before trial, there are several possible courses consistent with his obtaining relief. If this Court adopted the approach identified by the Utah Supreme Court in *Schrueder* it might review the trial record to determine, initially, whether there was any basis to conclude that a Superior Court judge would have decertified him to the Family Court. Regardless of whether *Schrueder* is applied, a remand for a re-constructed decertification hearing could be made available as a corrective procedure.

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[6]However, *Harris* appears to rely substantially on the wide ranging authority available to that court in the context of a habeas determination. *See* discussion at 855 P.2d at 413. 8 GCA ' 130.60 provides this Court with broad powers to modify a criminal judgment entered below but we do not decide here whether this authority could go so far as to permit the reformation of a criminal judgment to that of a juvenile adjudication.

under the age of 21 at the time that he was found to be deserving of a juvenile adjudication, the Family Court may possibly exercise jurisdiction and conduct an adjudication hearing[7]. But we do not determine here whether either of these procedures would ultimately be employed. Our holding is that meaningful relief is available through post-conviction review, even if that means reversing the criminal judgment and barring retrial. To the extent that less drastic remedies may also be available, these are matters that would have to be decided in tandem with the determination that relief is due.

[7]Provisions of the Family Court Act, specifically 19 GCA ''5105(b) and 5106(c), provide the Family Court with continuing jurisdiction over minors, charged before they are 18, until they are 21. The question of whether the instant adult charges could be deemed to have activated Family Court jurisdiction is a matter that would have to be decided in the context of determining entitlement to a decertification hearing. The scenarios discussed here are based on the assumption that a right to a reverse certification hearing were read into the Family Court Act. The manner in which associated portions of that Act would be construed would likely depend on the specific reasoning used to resolve that major issue.

[23] We make no effort to resolve here what particular form of relief would ultimately be appropriate and what statutory law would be drawn upon in its provision. We only conclude that adequate legal relief could ultimately be made available, even if it means the ultimate dismissal of the criminal charges. Our determination that a judicially fashioned remedy could be appropriately provided during post-conviction review appears consistent with the Legislative intent of 19 GCA '5125 (b). The Legislature has clearly stated that only post-conviction review of juvenile certifications should be available. We must conclude that it intended meaningful relief to be obtainable at that point despite appellate delays that they surely anticipated. In *People of the Territory of Guam v. Kingsbury*, 649 F.2d 740 (9th Cir. 1981), which we noted above to have been an apparent touchstone for 19 GCA '5125 (b)›s drafters, the time which elapsed while the matter was on appeal was nearly two years and the Defendant-Appellant was moving toward his twenty-first birthday when a decision was handed down. It appears that the Legislature resolved that the chance of a reversal on appeal, possibly accompanied by the loss of the Family Court as a forum in which to adjudicate the matter, was outweighed by the certain need to process criminal cases expeditiously without interlocutory disruptions. **C.f.**, 8 GCA '80.50(a) (requiring that criminal proceedings be expedited).

[24] We therefore conclude that it would be inappropriate for us to exercise our discretionary review authority to consider the merits of this interlocutory appeal. The Legislature has as a matter of policy, resolved that issues stemming from a minor›s treatment as an adult for purposes of prosecution should be raised only after conviction, if such occurs. Furthermore, the issue raised here is sufficiently addressed by sound precedent generated in the Appellate Division of the District Court of Guam, that this Court need not provide additional guidance at this time to the trial court.

[25] Therefore, this appeal is dismissed for want of jurisdiction.

DATED this _____ day of May, 1997.

PETER C. SIGUENZA,
Chief Justice

JOSE I. LEON GUERRERO,
Associate Justice P.T.