

**IN THE SUPREME COURT OF GUAM**

**DALLAS T. CARVER,** )  
 )  
 Petitioner-Appellant, )  
 )  
 vs. )  
 )  
**SUPERIOR COURT OF GUAM,** )  
 )  
 Respondent-Appellee, )  
 )  
 vs. )  
 )  
**PEOPLE OF GUAM,** )  
 )  
 Real Party In Interest. )  
\_\_\_\_\_ )

**Supreme Court Case No. WRM 98-004**  
**Superior Court Case No. CF 0648-96**

**OPINION**

Filed: November 17, 1998

Cite as: **1998 Guam 23**

Appeal from the Superior Court of Guam

Argued and Submitted on October 19, 1998

Hagåtña, Guam

**Appearing for Petitioner:**

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BEFORE: PETER C. SIGUENZA, Chief Justice, JANET HEALY WEEKS and BENJAMIN J. F. CRUZ, Associate Justices.

SIGUENZA, C.J.:

[1] Dallas T. Carver petitions this court for a writ of mandamus compelling the trial court to grant his motion to dismiss on the basis of a denial of his right to a speedy trial pursuant to Title 8 Guam Code Annotated (GCA) section 80.60 (1993) and to order his release from custody. This court issued an Alternative Writ of Mandate on October 7, 1998. Oral arguments on the matter occurred on October 19, 1998. The Real Party In Interest, the People of Guam, argued that the Petitioner was not denied his statutory right to a speedy trial because there was good cause for the delay in bringing the Petitioner to trial. We agree and accordingly order the dissolution of the Alternative Writ for the reasons stated below.

I.

[2] On December 31, 1996, the Superior Court Territorial Grand Jury returned an Indictment against Petitioner, Dallas T. Carver, charging him with three counts of Criminal Sexual Conduct (as a First Degree Felony). On June 27, 1997, a Superseding Indictment against Petitioner was returned with four additional charges of Criminal Sexual Conduct. His first appearance before the Superior Court was with counsel from the Public Defender Service Corporation on March 27, 1998, for arraignment. At that time, Petitioner asserted his right to a speedy trial and had executed and filed a written assertion with the lower court.

[3] On April 8, 1998, the Public Defender withdrew as counsel and present counsel was appointed to represent Petitioner. A trial setting before the court below occurred on April 20, 1998, and trial on the matter was set for May 11, 1998, without objection by counsel.

[4] Petitioner had filed three pre-trial motions: (1) a motion for the appointment of an investigator which was granted by the court below on the same day it was both filed and heard; (2) a motion to reduce bail which was subsequently heard and decided on April 20, 1998; and (3) a motion for additional discovery which was ruled upon on May 6, 1998.

[5] On May 4, 1998, Petitioner filed a motion to dismiss certain portions of the Superseding Indictment on the basis that the prosecution of these charges was time-barred by the statute of limitations. Included in the argument was the allegation that if the current statute of limitations for crimes of this nature were to be read to allow the prosecution of the Petitioner then it would be an invalid *ex post facto* law. During the pre-trial settlement conference of May 5, 1998, Petitioner moved *ex parte* for an order to shorten time for the hearing on this motion to dismiss. The court ordered the Real Party In Interest to respond to the motion by May 11, 1998, and over objection by Petitioner, set the hearing on the motion for May 12, 1998. The court then re-set the trial for May 18, 1998.

[6] A written ruling denying Petitioner's motion was issued by the court below on May 14, 1998. On May 18, 1998, Petitioner filed a motion to dismiss for the denial of his speedy trial rights under 8 GCA § 80.60(a)(2) (1993). The trial court denied the motion.

## II.

[7] This court has jurisdiction over original proceedings for mandamus pursuant to 7 GCA § 3107(b) (1994) and 7 GCA §§ 31202 and 31203 (1993). This court previously described mandamus relief as an extraordinary remedy that would be used in extreme situations. *Guam Publications, Inc. v. Superior Court of Guam*, 1996 Guam 6, ¶ 10; *People v. Superior Court of Guam (Quint)*, 1997 Guam 7, ¶ 7. We will employ the writ in order to “confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.” *Id.* (citations omitted).

[8] Issuance of a writ of mandamus is a matter of discretion. 7 GCA § 31401 (1993). To guide the exercise of our discretion, we balance, if applicable, the following factors:

- 1) [w]hether the party seeking the writ has no other adequate means, such as direct appeal, to attain the desired relief;
- 2) [w]hether the petitioner will be damaged or prejudiced in a way not correctable on appeal;
- 3) [w]hether the court's order is clearly erroneous as a matter of law;
- 4) [w]hether the court's order is an oft-repeated error, or manifests a persistent disregard of the rules;
- and 5) [w]hether the court's order raises new and important problems, or issues of first impression.

*Quint*, 1997 Guam 7, ¶ 8.

[9] The question before this court is whether the trial court had good cause for failing to commence the trial of Petitioner within the prescribed period of 8 GCA § 80.60(a)(2). A pre-trial writ of mandamus is the proper remedy for a trial court's denial of a motion to dismiss for violation of a defendant's statutory speedy trial rights. *See Gill v. Villagomez*, 140 F.3d 833, 835 (9<sup>th</sup> Cir. 1997).

### III.

[10] Section 80.60 of Title 8 of the Guam Code Annotated provides in relevant part:

(a) Except as otherwise provided in Subsection (b), the court shall dismiss a criminal action if: . . .

(2) The trial of a defendant, who is in custody at the time of his arraignment, has not commenced within forty-five (45) days after his arraignment;. . .

(b) A criminal action shall not be dismissed pursuant to Subsection (a) if: . . .

(3) Good cause is shown for the failure to commence the trial within the prescribed period.

[11] Interpretation of the Guam statute has been previously addressed by the Appellate Division of the District Court of Guam which has held that the determination of good cause for the delay of a criminal trial is a matter within the discretion of the trial court. *People v. Ibanez*, 1992 WL 97221 at 2 (D.Guam App. Div. Apr. 16, 1992), *aff'd* 993 F.2d 884 (9<sup>th</sup> Cir. 1993)(citing *People v. Johnson*, 26 Cal.3d 557, 570, 162 Cal.Rptr. 431, 439, 606 P.2d 738 (1980)). "Delay caused by the conduct of the defendant constitutes good cause, as does delay for the defendant's benefit or delay from unforeseen circumstances. . . The fact that a defendant refuses to waive his right to a speedy trial is not significant where good cause for the delay is apparent on the face of the record." *Id.*

[12] In *Ibanez*, the defendant argued that there was no good cause for the delay between his arraignment on March 28, 1990, and the beginning of his trial on November 27, 1990, approximately 244 days later. The court set out the series of events between arraignment and trial as involving a motion to disqualify the defendant's own counsel, a stay of a mandate issued by the Ninth Circuit Courts of Appeals, the defendant's

involvement in a court-ordered mental evaluation, and the defendant's motion to dismiss the indictment. In evaluating the delay attributed to the defendant's motions, the court held that it is not an abuse of discretion to exclude the period of time during which non-frivolous motions are pending. *Ibanez* at 2. It reasoned that pre-trial motion delay is automatically excluded from the speedy trial period in federal cases and that an analogous approach was warranted here. *Id.*<sup>1</sup>

[13] Although this court does not recognize the decisions of the Appellate Division as controlling our construction of the law, we consider its opinions as precedent binding upon the trial courts of Guam. *People v. Quenga*, 1997 Guam 6, ¶ 13, n. 4. However, these decisions, like those of the Court of Appeals, are considered persuasive authority when we consider an issue. *Id.* While we note our authority to distinguish pre-existing interpretations of our laws that have been determined by intermediate federal tribunals, this case does not present, on its face, an occasion for reconsideration.<sup>2</sup>

[14] Petitioner had filed a motion to dismiss certain portions of the Superseding Indictment as time-barred by the statute of limitations. Included in the motion was the averment of the constitutional violation of the

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<sup>1</sup> 18 U.S.C. § 3161(h)(1)(F) provides:

h) The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence:

1) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to--

F) delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion.

<sup>2</sup>It would be a different matter, however, if a court made the assumption that merely because a defendant's statutory right to a speedy trial can be suspended (upon the filing of any pre-trial motion(s) occasioned upon the resolution of meritorious issues of law or those that are made because of palpable pre-trial government misconduct) that it would be relieved from working with prompt diligence to resolve the issue.

The United States Supreme Court has discussed the exclusion of time, in certain instances, from the 70 day requirement of the Speedy Trial Act in *Henderson v. United States*, 476 U.S. 321, 106 S.Ct. 1871 (1986). *See also United States v. Baker*, 10 F.3d 1374 (9<sup>th</sup> Cir. 1993). The Act includes a limitation of a specified amount of time, after a motion is taken under advisement, as excludable; however, we observe that 8 GCA § 80.60 does not similarly provide an analogous limitation. It would invite this court's review if a lower court were to automatically justify any delay attributable to its consideration of a motion after it has been taken under advisement. The instant case does not require that we consider how much time may elapse after a court has taken a motion under advisement before the delay is no longer justified as "good cause".

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prohibition against *ex post facto* laws. The motion, if valid, certainly was to the benefit of the Petitioner as it could have resulted in the dismissal of several charges against him.

[15] In addition, the court below was diligent in working towards a prompt disposition of the motion. As stated earlier, the Petitioner's motion to dismiss had been filed on May 4, 1998, and the trial court scheduled an expedited hearing and response to resolve the issues raised. The motion was argued five days afterward and a decision by the court was made and filed four days later. The court's action resulted in the delay of trial of the Petitioner for nine (9) days.

[16] Finally, Petitioner offers no authority, statutory or otherwise, to buttress his assertion that time is not suspended while the court seeks to resolve motions involving the defendant.

Accordingly, we find that there was good cause for the delay of Petitioner's trial and that his statutory right to a speedy trial, during which a non-frivolous motion was pending, was not violated.

[17] For these reasons, the Alternative Writ of Mandate issued on October 7, 1998, is hereby DISCHARGED and the trial court's order denying Petitioner's motion is AFFIRMED.

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JANET HEALY WEEKS  
Associate Justice

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BENJAMIN J. F. CRUZ  
Associate Justice

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PETER C. SIGUENZA  
Chief Justice