

# IN THE SUPREME COURT OF GUAM

**PEOPLE OF GUAM**

Plaintiff-Appellant

**vs.**

**TAE KON KIM**

Defendant-Appellee

## OPINION

Supreme Court Case No. CRA98-017

Superior Court Case No. CM0053-97

**Filed: April 8, 1999**

**Cite as: 1999 Guam 7**

Appeal from the Superior Court of Guam  
Submitted without oral argument on March 22, 1999  
Hagåtña, Guam

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

SIGUENZA, C.J.:

[1] The People of Guam appeal the trial court's decision to dismiss all charges of a misdemeanor complaint pursuant to precedent established by *People v. Palomo*, 1998 Guam 12. The People concede that the charge listed on the Citation and Notice to Appear, Driving Under the Influence of Alcohol, should be dismissed. However, the People argue the charge of Reckless Driving, an offense listed on the complaint but not on the citation, should survive notwithstanding *Palomo*.

[2] We previously held that the date of appearance listed in the citation was a *de facto* statute of limitations. *Palomo* at ¶ 14. The adoption of this line of reasoning requires all charges that may arise from a particular occurrence be brought by the appearance date provided for in the citation. Accordingly, we affirm the trial court's decision.

### **BACKGROUND**

[3] The pertinent facts of this case are undisputed. Appellee Tae Kon Kim was arrested on April 28, 1996. Kim was subsequently released upon issuance of a citation. The document informed Kim that he would answer to the charge of Driving Under the Influence of Alcohol (DUI) and instructed Kim to appear on July 31, 1996 at 9:00 AM. A criminal complaint was not filed by July 31, 1996 nor was there an arraignment or hearing of any kind on the matter.

[4] A criminal complaint was eventually filed on January 6, 1997. The criminal complaint charged both Driving Under the Influence of Alcohol, pursuant to 16 GCA § 18102, and Reckless Driving, pursuant to 16 GCA § 9107. Kim subsequently filed a motion to dismiss based on, among other grounds, failure to comply with 8 GCA § 25.30 and the precedent established by *Palomo*.

[5] A hearing on the motion to dismiss was heard on September 3, 1998. The People conceded the DUI charge was subject to dismissal. However, the People asserted the Reckless Driving charge survived because it was not specified on the citation issued to Kim. Conversely, Kim argued *Palomo* made clear that all prosecution was barred and, therefore, all charges must be dismissed.

[6] The trial court issued a Decision and Order on September 11, 1998 and found that additional charges do not survive. Consequently, the trial court dismissed all charges of the complaint with prejudice.

### ANALYSIS

[7] The issue before this court is whether all charges contained in a misdemeanor complaint, including charges not previously listed on the Citation, should be dismissed. This issue is a question of law that we will review *de novo*. *People v. Quintanilla*, 1998 Guam 17, ¶ 8; *see also Palomo* at ¶ 4 (using a *de novo* standard of review when interpreting Guam statute). Although the People urge this court to rely upon the California case of *Wallace v. Municipal Court*, 140 Cal. App. 3d 100, 189 Cal. Rptr. 886 (1983) for guidance, we conclude that *Palomo* is dispositive of the issue we now address.

[8] This court previously held that when law enforcement utilizes the citation method of charging a criminal complaint, as set forth in 8 GCA §§ 25.20 and 25.30 (1993), the prosecuting attorney must take action on or before the date listed on the issued citation. *Palomo* at ¶ 14 (dismissing the entire complaint consisting of two charges although the citation listed only one charge). In particular, a prosecutor must either “file the notice to appear and a complaint with affidavits or . . . make reasonable efforts to notify the defendant that he need not appear” on or before the specified date. *Id.* This court further held that given this statutory scheme, the failure to act in such cases requires dismissal with prejudice as any other remedy would be ineffective. *Id.* at ¶¶ 15-20.

[9] Our holding in *Palomo* was premised on the interpretation that 8 GCA §25.30 created a *de facto* statute of limitations. We wrote: “While it is true that the decision on whether to prosecute a case is within the discretion of the prosecuting attorney, this discretionary authority is not unlimited. Instead, certain limitations are placed upon that discretionary authority as evidenced by both sections 25.30 and 10.30. As it is now, section 25.30 does establish a *de facto* statute of limitations. The court’s dismissal of this action essentially provides no remedy for the People to regain the power to **prosecute the case.**” *Id.* at 14 (emphasis added).

[10] This language serves to bar completely all charges of the complaint and not just those charges listed on a citation. *Palomo* deliberately addressed section 25.30 in terms of a statute of limitations. In so doing, we were well aware that: 1) An offense is committed when every element occurs; and 2) Time starts to run for purposes of initiating a prosecution on the day after an offense is committed.

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8 GCA § 10.60 (1993).<sup>1</sup> Applying, by analogy, the statutory definition of section 10.60 to the *de facto* statute of limitations period listed in the citation, the prosecuting attorney must file the additional charges on or before the citation date. By the time the citation is issued, the offenses would be “committed” as defined under the statute. Time would therefore begin running for purposes of commencing prosecution on or before the date listed in the citation.

### CONCLUSION

[11] We therefore AFFIRM the decision and order of the trial court dismissing all charges of the complaint with prejudice.

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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

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<sup>1</sup>An offense is also committed when, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant’s complicity therein is terminated. 8 GCA § 10.60.