IN THE SUPREME COURT OF GUAM

MONARLITO E. NARON,
Petitioner-Appellant

vs.

EDUARDO C. BITANGA, as Director, Department of Corrections, Government of Guam; CARL T.C. GUTIERREZ, Governor of Guam, and Territorial Parole Board,
Respondent-Appellees

OPINION

Supreme Court Case No. CVA98-014
Superior Court Case No. SP269-97

Filed: October 14, 1999

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Appeal from the Superior Court of Guam.
Argued and submitted on May 14, 1999.
Hagåtña, Guam

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BEFORE: BENJAMIN J.F. CRUZ, Chief Justice, PETER C. SIGUENZA, Associate Justice, and JOHN A. MANGLONA, Designated Justice.

CRUZ, C.J.:

[1] This is an appeal of the Superior Court of Guam's denial of Petitioner-Appellant Monarlito E. Naron's Petition for a Writ of Habeas Corpus. For the reasons set forth below, we assert jurisdiction over this matter, and DENY Appellant's Petition for a Writ of Habeas Corpus.

FACTUAL AND PROCEDURAL BACKGROUND

[2] Petitioner-Appellant Monarlito E. Naron, (hereinafter, "Appellant") by plea agreement executed on March 16, 1993 and entered on March 23, 1993, pled guilty to various first and second degree felonies, to wit, Burglary, Theft of Money, and Aggravated Assault, a Special Allegation of Possession and use of a Deadly Weapon in the Commission of a Felony, and Robbery. Pursuant to this plea agreement, he received a sentence of twenty-five (25) years with credit for time served.

[3] Appellant was sixteen years old when he and his attorney began discussions regarding the plea agreement. At the time of his change of plea hearing Appellant had just turned seventeen. In light of his age at the time he negotiated and entered into his plea agreement, Appellant contends that he was illegally and unconstitutionally incarcerated because he was not considered for sentencing under Guam's Youth Correction Act ("YCA"). Appellant also asserts that 1) He was not competent to enter into a plea agreement; 2) He was not old enough to understand the nature of a 25-year sentence; 3) He did not know

the terms of the sentence for which he was bargaining; 4) He did not receive the sentence for which he thought he had bargained; and 5) He was adversely affected by the absence of his parents at his change of plea hearing.

ANALYSIS

[4] We have jurisdiction over this matter pursuant to 7 GCA sections 3107-3108 (1994). In its discretion, this court may elect to treat an appeal of the denial of a Petition for a Writ of Habeas Corpus as an original petition for the same relief. *Borja v. Bitanga*, 1998 Guam 29, ¶ 14. We elect to exercise such discretion in the instant matter, and in doing so, we shall analyze the merits of this appeal as an original petition.

[5] In *Borja v. Bitanga*, 1998 Guam 29, this court held that sentencing a defendant in accordance with the YCA was not possible because the YCA had not been implemented. *Borja*, at ¶ 21. Based on the record before us, we believe that there are no changes relative to the condition of the YCA that would necessitate a departure from *Borja*. At all times relevant to this case, the YCA still had not been implemented. Consequently, Appellant's assertions of error regarding the nonapplication of the YCA are entirely unfounded and require no further comment.

[6] Notwithstanding the application of *Borja* to effectively dismiss Appellant's arguments in favor of being sentenced pursuant to the YCA, issues as to Appellant's capacity to enter into a plea agreement, his understanding of the plea agreement, and the lack of parental involvement at the change of plea hearing still remain. Each is addressed in turn.

A. Appellant's Capacity to Enter into Plea Agreement.

[7] At issue is the standard by which a court shall determine the capacity of a minor to enter into a plea agreement. Analogizing to contract law, Appellant asserts that he lacked the capacity to enter into a plea agreement. He argues that because his minor status deprived him of the capacity to enter into a valid contract for goods, his status as a minor also prevented him from entering into a plea agreement.

[8] We do not agree. Clearly, similarities do exist between one area of law and another such that in certain instances principles from one body may aid in the analysis of the another. For instance, in *Ex parte Johnson*, 669 So.2d 205 (Ala. 1995), the court recognized that "plea agreements resemble formal contracts and that contract law theories provide a 'useful analytical framework,' for dealing with plea agreements . . . ." *Id.* at 206 citing *Ex parte Yarber*, 437 So.2d 1330, 1334 (Ala. 1983). Qualifying this statement, however, the court further stated that, "contract law cannot be rigidly applied to plea agreements." *Id.*

[9] The caveat in *Ex parte Johnson* serves to underscore the distinction between contract and criminal law as well as their respective applications to plea agreements. As it pertains to the formation of a plea, this distinction is further illustrated in *Lewis v. State*, 602 So. 2d 68 (La. Ct. App. 1992). In *Lewis*, the court recognized that "[a]lthough the law of obligations (contracts) can be used by analogy to analyze the legal relations of the parties to the plea bargain, the validity of the plea bargain and the remedies for breach of it are controlled by criminal substantive and procedural law." *Id.* at 75.

[10] Furthermore, in *State v. Taylor*, 716 So.2d 174 (La. Ct. App. 1998), the defendant pled guilty

to several counts of rape and burglary. Subsequently, he argued that he lacked the capacity to agree to this plea bargain. *Id.* at 177. Like the Appellant in the instant matter, the defendant sought the aid of civil contract law. Specifically, the defendant asserted that "he was a minor who could not legally sign and bind himself on a contract for a portable television set" much less enter into a binding plea agreement. *Id.* The court held that this argument was without merit. *Id. Taylor* noted that "civil law minority does not prevent a seventeen year old from being treated as an adult for criminal purposes 'because very different concerns are involved in criminal and civil matters.'" *Id.* at 176-77 quoting *State in Interest of Lewis*, 377 So.2d 1322, 1325 (La. Ct. App. 1979).

[11] In explaining its conclusion, *Taylor* emphasized that the defendant was automatically excluded from the jurisdiction of the juvenile courts due to the nature of the offenses charged. *Id.* at 177. In light of these circumstances, the court determined that it would have been unjust to remove the defendant from the juvenile courts while at the same time prohibiting him, as a minor, from entering into a plea agreement that would presumably be in his best interests. *Id.* at 177-78. It held that,

> [the] defendant's capacity to accept a plea bargain negotiated between his counsel and the State had to flow as a necessary corollary to his exposure to severe criminal sanction as a juvenile facing trial as an adult in district court. Were this not the case, a juvenile being tried as an adult who was offered a plea bargain by the State would be deprived of the opportunity to act in his own best interest by reducing his sentencing exposure through plea bargaining.

Id.

[12] We find the *Taylor* decision to be persuasive. In the instant case, Appellant was charged as

an adult pursuant to 19 GCA section 5106 (a) (1993).[1] As a consequence, any meaningful opportunity to act in his own interests necessarily entailed the ability to form, agree to, and ultimately, be sentenced in accordance with a binding plea agreement. A minor legally charged and treated as an adult must not be prevented from entering into a plea agreement that would be in his best interests solely because of his status as a minor. Based on the foregoing, we hold that Appellant had the capacity to negotiate and enter into a binding plea agreement.

B. Appellant's Understanding of the Plea Agreement Terms.

[13] We now address Appellant's assertion that he did not understand his plea agreement to a legally sufficient degree. In the majority of jurisdictions the standard of competency for pleading guilty is identical to the competency standard for undergoing trial.[2] *See Godinez v. Moran*, 509 U.S. 389, 396, n.5, 113 S.Ct. 2680, 2685 (1993). Specifically, the standard is whether the defendant has "sufficient present ability to consult with his lawyer with a reasonable degree of rational

[1]Section 5106 provides: Certification for Criminal Proceedings.

> (a) If a child is sixteen (16) years of age or older at the time he committed the offense for which he is charged, and if the conduct is a misdemeanor or a felony of the third degree, and if the court after full investigation deems it contrary to the best interest of such child or of the public to retain jurisdiction, the court may, in its discretion, certify such child for proper criminal proceedings to any court which would have trial jurisdiction of such offense if committed by an adult. **A child who is sixteen (16) years of age or older at the time he committed the offense for which he is charged shall automatically be charged as an adult for any act which would constitute a felony of the first or second degree along with any acts which are misdemeanors or felonies of the third degree which are part of the same scheme of criminal activity as the felony.** If a child is under sixteen years of age at the time he committed the offense for which he is charged, and if the conduct would constitute an offense under 9 GCA Chapter 16 (Homicides), and if the court after full investigation deems it contrary to the best interest of such child or of the public to retain jurisdiction, the court may, in its discretion, certify such child for proper criminal proceedings to any court which would have trial jurisdiction of such offense if committed by an adult. If a child is certified as an adult, the same judge shall not, in turn preside over the criminal proceedings against such child.
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> 19 GCA § 5106 (1993) (emphasis added).

[2]This standard is recognized by the majority of jurisdictions to include: the Courts of Appeals in the 1st, 2nd, 3rd, 5th, 6th, 7th, 10th, and 11th Circuits and by many state courts.

understanding" and a "rational as well as factual understanding of the proceedings against him." *Id.* at 396 quoting *Dusky v. United States*, 362 U.S. 402, 403, 80 S.Ct. 788, 789 (1960). The Ninth Circuit, however, has a slightly higher standard than the one set forth in *Dusky*. In *Sieling v. Eyman*, 478 F.2d 211 (9th Cir. 1973), the court held that a person is incompetent to plead guilty "if a mental illness has substantially impaired his ability to make a reasoned choice among the alternatives presented to him and to understand the nature of the consequences of his plea." *Id.* at 214-15.

[14] In this case, Appellant implies that he lacked the higher level of competency required in *Sieling.* However, the record fails to indicate any evidence to support this assertion. Appellant did not prove that "a mental illness ha[d] substantially impaired his ability to make a reasoned choice among the alternatives presented to him . . ." or that he could not "understand the nature of the consequences of his plea" as per *Sieling.*[3] Moreover, Appellant failed to demonstrate that he lacked "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" or a "rational as well as factual understanding of the proceedings against him" as per *Dusky*.[4] Thus, under either the Ninth Circuit or the majority standard, there was no evidence to indicate that Appellant was incompetent.

[15] Appellant also contends that he lacked a factual understanding of the terms of his sentence. In *United States v. Watley*, 987 F.2d 841 (1993), the court found that the defendant's guilty plea was rendered involuntary by 1) Incorrect information received by the defendant before and at the guilty plea hearing about the possible sentence; and by 2) The failure to advise the defendant about the

[3] *See Sieling*, 478 F.2d at 214-15.

[4] *See Godinez*, at 396 *quoting Dusky*, 362 U.S. at 403, 80 S.Ct. at 789 (1960).

peculiar interplay between the Sentencing Guidelines and statutory prescriptions, which made maximum and minimum sentences identical for use of firearm during a drug offense and for conspiracy to possess cocaine with intent to distribute. *Id.* at 183.

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[16] Contrary to the situation in *Watley*, we believe that the lower court did not render incorrect information to Appellant. 9 GCA section 40.10 provides in relevant part that,

> (b) Robbery in the first degree is a felony of the first degree. In the case of robbery in the first degree, **the court shall impose a sentence of imprisonment of a minimum term of ten (10) years and may impose a maximum of up to twenty-five (25) years**; the minimum term imposed shall not be suspended nor probation be imposed in lieu of said minimum term nor shall parole, work release or educational programs outside the confines of prison be granted before completion of the minimum term. The sentence shall include a special parole term of not less than three (3) years in addition to such time of imprisonment.

9 GCA § 40.10 (1993) (emphasis added).

[17] We note that prior to addressing Appellant, the court and Appellant's counsel at the time of the change of plea hearing discussed the plea agreement and terms each charge individually, including the robbery charge.[5] The court stated that the sentence on that particular charge pursuant to the plea agreement would be "20 years for the count of robbery to be served concurrent; and of course, pursuant to statute, can't be paroled on that for ten years." *Id.* The court then addressed the portion of the change of plea hearing cited by Appellant by asking Appellant if he understood the maximum penalties to which he could be sentenced for each charge.[6] Upon receiving an affirmative response, the court then listed the charges individually in order for Appellant to personally tell the court what he understood the maximum sentence to be. For instance, the court stated, "[w]e'll start with the first, which is burglary."[7] To which Appellant, responded "[f]ive years."[8] The court then

[5] Transcript, p. 6 (Change of Plea Hearing, March 23, 1993).

[6] Transcript, p. 33 (Change of Plea Hearing, March 23, 1993).

[7] *Id.*

[8] Transcript, p. 34 (Change of Plea Hearing, March 23, 1993).

stated, "[t]hat's correct. And for theft of money?"[9] Appellant then responded, "[f]ive years, Your honor."[10]

[18] After addressing the charge of aggravated assault and the special allegations the court then addressed the robbery charge in question. The court addressed this charge in the same individual manner, stating "[a]nd you are also charged with one count of robbery. And what's the maximum sentence on that?"[11] Appellant responded, "[t]wenty five."[12] The court then stated, "[a]nd you understand you can't get parole until you have served ten years."[13]

[19] The context of the colloquy cited by Appellant clearly indicates that the judge was referring only to the Robbery conviction and its term of ten years before parole eligibility. It is evident, that Appellant was not misinformed by the judge regarding his eligibility for parole. On the contrary, the record indicates that Appellant adequately understood the terms of his plea agreement. Therefore, we hold that Appellant possessed the requisite understanding of his plea agreement, both its general import as well as its specific terms.

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[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

C. The Absence of Parental Assistance During the Change of Plea Hearing.

[20] The last issue raised, albeit, tangentially by Appellant pertains to his lack of parental assistance at the time of his change of plea hearing. Appellant cites *Ball v. Ricketts*, 779 F.2d 578 (10th Cir. 1985) for the proposition that the absence of parental assistance violates the constitutional right to due process. In that case, defendant Ball was sixteen years old at the time he pled guilty although he had told the court that he was seventeen. *Id.* at 579. Despite his misrepresentation regarding his age, there was no effect on the case because the judge still treated Ball as a minor. *Id.* at 580. In addition, Ball declined to be represented by an attorney. *Id.* at 579. However, subsequent to his guilty plea, Ball asserted that he did not understand the charges and the court procedures at the time he pled guilty. *Id.* Ultimately, the court held that the lack of notice to Ball's parents was sufficient to vacate the guilty plea. *Id.* at 581 (relying heavily on *In re Gault*, 387 U.S. 1, 33, 87 S.Ct. 1428, 1446 (1967) for the proposition that due process requires notice in writing to a juvenile and his parents of the specific charge at the earliest practicable time and in any event in advance of the initial hearing.).

[21] *Ball* is distinguishable from the case at bar on several significant points. First, Appellant was seventeen at the time the plea agreement was executed and entered. In contrast, the defendant in *Ball* was sixteen. Appellant also had the assistance of counsel whereas the defendant in *Ball* did not. Lastly, Appellant fails to prove that his parents were not notified of his charges prior to his initial hearing. Based on the foregoing, we hold that the plea agreement was valid despite the absence of Appellant's parents at the change of plea hearing.

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CONCLUSION

[22] Appellant had the capacity to enter into his plea agreement and he adequately understood the plea agreement into which he entered. In addition, the absence of parental assistance did not rise to the level of a due process violation. Accordingly, Appellant's Petition for a Writ of Habeas Corpus is **DENIED**.

PETER C. SIGUENZA
Associate Justice

JOHN A. MANGLONA
Designated Justice

BENJAMIN J.F. CRUZ
Chief Justice