IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM
Plaintiff-Appellee

vs.

ARTHUR LIWANAG VILLAPANDO
Defendant-Appellant

Supreme Court Case No. CRA99-007
Superior Court Case No. CF0280-97

PEOPLE OF GUAM
Plaintiff-Appellant

vs.

YXEL VINCENT AQUINO ESPINA
Defendant-Appellee

Supreme Court Case No. CRA99-009
Superior Court Case No. CF0078-98

PEOPLE OF GUAM
Plaintiff-Appellant

vs.

MATTHEW J. C. THOMAS
Defendant-Appellee

Supreme Court Case No. CRA99-0l0
Superior Court Case No. CF0078-98

PEOPLE OF GUAM
Plaintiff-Appellant

vs.

LEONILA B. RONQUILLO
Defendant-Appellee

Supreme Court Case No. CRA99-011
Superior Court Case No. CF0187-97

PEOPLE OF GUAM
Plaintiff-Appellant

vs.

ROBERT EUGENE DAVIS
Defendant-Appellee

Supreme Court Case No. CRA99-012
Superior Court Case No. CF0133-97

PEOPLE OF GUAM
Plaintiff-Appellant

vs.

ROSA CRUZ REYES aka ROSA TALAVERA
Defendant-Appellee

Supreme Court Case No. CRA99-013
Superior Court Case No. CF0529-97

PEOPLE OF GUAM
Plaintiff-Appellant

vs.

DAVID ROSA SABLAN
Defendant-Appellee

Supreme Court Case No. CRA99-014
Superior Court Case No. CF0045-98

PEOPLE OF GUAM
Plaintiff-Appellant

vs.

VINCENT QUINTANILLA MENDIOLA
Defendant-Appellee

Supreme Court Case No. CRA99-015
Superior Court Case No. CF0058-98

PEOPLE OF GUAM
Plaintiff-Appellant

vs.

CARLENA LLARENA JIRO
Defendant-Appellee

Supreme Court Case No. CRA99-016
Superior Court Case No. CF0202-98

PEOPLE OF GUAM
Plaintiff-Appellant

vs.

JOHN SANTIAGO QUINATA, JR.
Defendant-Appellee

Supreme Court Case No. CRA99-017
Superior Court Case No. CF0274-98

PEOPLE OF GUAM
Plaintiff-Appellant

vs.

KEONI DANIEL BLAS
Defendant-Appellee

Supreme Court Case No. CRA99-018
Superior Court Case No. CF0428-98

PEOPLE OF GUAM
Plaintiff-Appellant

vs.

GEORGE DIEGO FLORES
Defendant-Appellee

Supreme Court Case No. CRA99-019
Superior Court Case No. CF0430-98

PEOPLE OF GUAM
Plaintiff-Appellant

vs.

MICHAEL ABADAM VILLACORTA
Defendant-Appellee

Supreme Court Case No. CRA99-020
Superior Court Case No. CF0488-98

PEOPLE OF GUAM
Plaintiff-Appellant

vs.

ALICIA T. PINAULA
Defendant-Appellee

Supreme Court Case No. CRA99-021
Superior Court Case No. CF0748-98

PEOPLE OF GUAM
Plaintiff-Appellant

vs.

TOMAS L. ATIENZA
Defendant-Appellee

Supreme Court Case No. CRA99-022
Superior Court Case No. CF0021-99

PEOPLE OF GUAM
Plaintiff-Appellant

vs.

JAMES W. A. PANGELINAN
Defendant-Appellee

Supreme Court Case No. CRA99-023
Superior Court Case No. CF0022-99

OPINION

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Appeals from the Superior Court of Guam
Argued and submitted on August 20, 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 matter comes before the court based upon motions to dismiss, filed on behalf of each defendant, pursuant to 8 GCA § 25.30 (1993)and our prior ruling in *People v. Palomo*, 1998 Guam 12. Defendant Villapando was denied his motion to dismiss when the trial court determined that § 25.30 and the law in *Palomo* did not apply to felony cases. The remainder of the defendants were granted dismissals when another trial court ruled that the same law was applicable to felonies. Villapando appealed the denial of his motion, sought and was granted interlocutory review by this court. The People appealed the dismissals in the remaining cases.

[2] The court has not been presented with convincing arguments to support the reversal of its decision in *Palomo.* Furthermore, upon review of the applicable law and the arguments of the parties, the court finds that § 25.30 and its interpretation in *Palomo* mandates application to felony cases.

FACTUAL AND PROCEDURAL BACKGROUNDS

A. Arthur Liwanag Villapando

[3] The incidents which led to the arrest of Villapando for possession of an illegal substance occurred on or about June 22, 1996. Villapando was arrested, booked and released and given a citation and notice to appear on September 25, 1996. On or before September 25, 1996, no complaint or affidavit was filed nor was Villapando notified that he need not appear and that no prosecution would be instituted against him. On June 28, 1997, Villapando was charged by a

Magistrate's Complaint with possession of a schedule II controlled substance (the first charge) as well as possession of a controlled substance with intent to deliver (the second charge)[1]. Villapando made a motion to dismiss based upon § 25.30 and *Palomo* which the trial court denied, finding that the decision in *Palomo* did not apply to felony offenses. Villapando moved this court to take jurisdiction over this case based upon its power of interlocutory review. This court accepted jurisdiction under 7 GCA § 3108(b) (1994).

B. Yxel Vincent Aquino Espina

[4] Espina was arrested, booked and released on September 19, 1995, on charges of theft of a motor vehicle, theft of property, three (3) counts of conspiracy to commit theft, arson, criminal mischief, and destruction of evidence. Espina was given a citation and notice to appear in the Superior Court on December 20, 1995, which he signed. On December 20, 1995, Espina appeared at court only to find that no charges had been filed against him. Espina was later indicted for theft of a motor vehicle, theft of property, theft by receipt of property, i.e., a motor vehicle, arson, criminal mischief and theft by receiving on January 29, 1998.[2] Pursuant to a motion to dismiss under § 25.30 and *Palomo*, the trial court dismissed the case against Espina. The People timely appealed.

C. Matthew C. Thomas

[1]The second charge was not included in the aforementioned notice to appear, but apparently arose from the same incident on June 22, 1996. It should be noted that in Villapando, as well as several of the other cases at bar, some of the crimes for which the defendants were ultimately indicted are different from those upon which the defendants were originally arrested and cited to appear. The facts of these cases give rise to the court's holding in *People v. Kim*, 1999 Guam 7, which shall also need to be applied to these specific cases where surviving charges are at issue.

[2]Not all of the crimes for which the defendant was indicted were charged out in the citation and notice to appear.

[5] Thomas was arrested, booked and released on September 14, 1995 for theft of a motor vehicle and related offenses. Upon release, Thomas signed a citation and notice to appear in the Superior Court on December 20, 1995; however, Thomas arrived at court to find no charges had been filed against him. Thomas was subsequently indicted on January 29, 1998, for theft of a motor vehicle, theft of property, theft by receipt of property, i.e. a motor vehicle, arson, criminal mischief and theft by receiving.[3] The trial court dismissed the case against him based upon a motion to dismiss pursuant to § 25.30 and *Palomo*. The People timely appealed.

D. Leonila B. Ronquillo

[6] Ronquillo was arrested, booked and released on February 14, 1995 for theft by deception. Upon release, she was given a citation and notice to appear in the Superior Court on May 14, 1995. Ronquillo appeared on May 14, 1995, at the Superior Court to discover that no charges had been filed against her. She was later indicted on May 1, 1997, for theft of property, two (2) counts of theft by deception and theft of property held in trust. Again, pursuant to a motion to dismiss based under § 25.30 and *Palomo*, the trial court dismissed the case against Ronquillo. The People timely appealed.

E. Robert Eugene Davis

[7] Davis was arrested, booked and released on July 16, 1996, for driving under the influence. He was given a citation and notice to appear in the Superior Court on October 16, 1996; however,

[3]Not all of the crimes for which the defendant was indicted were charged out in the citation and notice to appear.

no charges were filed against him at that time. Subsequently, on April 2, 1997, an indictment was filed charging Davis with driving while under the influence of alcohol (as a 3rd degree felony) and improper storage of an open container (as a misdemeanor). The trial court dismissed the case pursuant to a motion to dismiss under § 25.30 and *Palomo*. The People timely appealed.

F. Rosa Cruz Reyes aka Rosa Talavera

[8] Reyes was arrested, booked and released on September 27, 1996, for under ring, theft by deception, and conspiracy to commit theft. She was given a citation and notice to appear in the Superior Court on January 8, 1997. On that date, no charges had been filed. On November 13, 1997, Reyes was indicted on conspiracy and theft. The trial court dismissed the case pursuant to a motion to dismiss under § 25.30 and *Palomo*. The People timely appealed.

G. David Sablan

[9] Sablan was arrested, booked and released on August 8, 1997. He was given a citation and notice to appear in the Superior Court on December 10, 1997. No charges were filed against him at that time. Subsequently, he was indicted for driving under the influence of alcohol on January 16, 1998. The trial court dismissed the case based upon a motion to dismiss pursuant to § 25.30 and *Palomo*. The People timely appealed.

H. Vincent Quintanilla Mendiola

[10] Mendiola was arrested, booked and released on May 9, 1996, for drinking in a motor vehicle, possessing an open container in the motor vehicle and possession of a firearm without an

identification card. Upon release, Mendiola was given a citation and notice to appear in the Superior Court on August 14, 1996. Mendiola was subsequently indicted on a charge of possession of a firearm without an identification card on January 22, 1998. The court dismissed the case pursuant to a motion to dismiss under § 25.30 and *Palomo*. The People timely appealed.

I. Carlena Llarena Jiro

[11] Jiro was arrested, booked and released on August 29, 1997, for theft of property held in trust. Upon release, Jiro was given a citation and notice to appear in the Superior Court on January 2, 1998. It is not clear whether she appeared on January 2, 1998; however, no charges were filed against her by that date. She was later indicted on March 13, 1998 for theft. The court dismissed her case based upon a motion to dismiss under § 25.30 and *Palomo*. The People timely appealed.

J. John Santiago Quinata, Jr.

[12] Quinata was arrested, booked and released on August 2, 1997 for possession of a concealed firearm, possession of a firearm without an identification card and possession of an unregistered firearm. Upon release, he was given a citation and notice to appear in the Superior Court on December 3, 1997. No charges were filed against Quinata until April 20, 1998, when an indictment was filed charging him with possession of a firearm without an identification card and possession of a concealed firearm. The trial court dismissed the case pursuant to a motion to dismiss under § 25.30 and *Palomo*. The People timely appealed.

K. Keoni Daniel Blas

[13] Blas was arrested, booked and released for burglary and theft of property on June 3, 1997. Upon release, Blas was given a citation and notice to appear in the Superior Court on September 24, 1997. No charges were filed until he was indicted on June 17, 1999, and charged with theft and conspiracy.[4] The trial court dismissed the case based on a motion to dismiss pursuant to § 25.30 and *Palomo*. The People timely appealed.

L. George Diego Flores

[14] Flores was arrested, booked and released on June 10, 1997, for burglary. Upon release, he signed a citation and notice to appear in the Superior Court on October 1, 1997; however, no charges were filed against him by that date. Flores was later indicted on June 17, 1998, for burglary. The trial court dismissed his case pursuant to a motion to dismiss based upon § 25.30 and *Palomo*. The People timely appealed.

M. Michael Abadam Villacorta

[15] Villacorta was arrested, booked and released on July 1, 1997, for burglary and possession of stolen property. Upon release, Villacorta was given a citation and notice to appear in the Superior Court on October 22, 1997. Villacorta was not indicted until July 14, 1998 on charges of burglary, conspiracy and theft. The trial court dismissed the case based upon a motion to dismiss under § 25.30 and *Palomo*. The People timely appealed.

[4]Not all of the crimes for which the defendant was indicted were charged out in the citation and notice to appear.

N. Alicia T. Pinaula

[16] Pinaula was arrested, booked and released on January 4, 1998, for possession of a concealed firearm, possession of a firearm without an identification card and driving while under the influence of alcohol. Upon release, Pinaula was given a citation and notice to appear in the Superior Court on May 6, 1998. Pinaula was later indicted on October 13, 1998, on charges of possession of a firearm without an identification card, possession of a concealed weapon, reckless driving and imprudent driving.[5] The trial court dismissed the case based upon a motion to dismiss under § 25.30 and *Palomo*. The People timely appealed.

O. Tomas L. Atienza

[17] Atienza was arrested, booked and released for terrorizing, reckless conduct, possession of a concealed firearm and driving under the influence. Atienza was to appear in the Superior Court on June 24, 1998; however, no charges were filed at that time. An indictment was filed on January 5, 1999, wherein Atienza was charged with terrorizing and possessing a concealed weapon. The trial court dismissed the case based on a motion to dismiss filed under § 25.30 and *Palomo*. The People timely appealed.

P. James W.A. Pangelinan

[18] Pangelinan was arrested, booked and released on July 31, 1998, for burglary and theft of a motor vehicle. Upon release, Pangelinan was given a citation and notice to appear in Superior Court

[5] Not all of the crimes for which the defendant was indicted were charged out in the citation and notice to appear.

on December 2, 1998. Pangelinan was later indicted on January 5, 1999 for burglary, theft, and theft by receiving. The trial court dismissed the case pursuant to a motion to dismiss under § 25.30 and *Palomo*. The People timely appealed.

[19] In an order dated June 24, 1999, this court set out a briefing schedule; consolidated the above-captioned cases and required the separate Defendants-Appellees to either file briefs or file a statement of joinder in Villapando's brief on or before July 30, 1999.

[20] Defendants Espina, Thomas, Ronquillo, Villacorta and Atienza all filed motions to join in the brief of Villapando. Defendants Davis, Reyes, Mendiola, Jiro, Quinata, Blas, Flores, Pinaula and Pangelinan all filed briefs on behalf of themselves.[6]

DISCUSSION

[21] This court has jurisdiction over the appeal in *People v. Villapando* pursuant to its power to review interlocutory matters under 7 GCA § 3108(b) (1994). The court has jurisdiction over the remainder of the cases pursuant to 7 GCA § 3107(b) (1994).[7]

[22] The sole issue in these cases is whether the *de facto* statute of limitations (hereinafter "SOL") contained in 8 GCA § 25.30, as ruled applicable to misdemeanors in *Palomo*, also applies to the prosecution of felonies. Questions of statutory interpretation are reviewed *de novo*. *People v. Quichocho*, 1997 Guam 13, ¶ 3.

[6]Counsel for defendant David Sablan did not follow the court's order in that he failed to submit a brief and/or a statement of joinder in Villapando's brief, despite the fact that at the status hearing of June 24, 1999, counsel stated an intention to file a separate brief. Guam Rule App. Pro. 17(d) indicates that an Appellee who fails to file a brief waives oral argument. In this case, counsel for Sablan did not participate in oral arguments.

[7]8 GCA § 130.20(a)(5) (1993)allows the Government to appeal from an order or judgment dismissing an action prior to the attachment of jeopardy.

[23] Villapando appeals to this court to interpret 8 GCA § 25.30 as applicable to felonies as well as misdemeanors. The basis of his arguments are founded upon this court's decision in *People v. Palomo*, 1998 Guam 12, wherein the court construed § 25.30 to require the People, in misdemeanor cases, to either file a complaint before the notice to appear date given by the police or, if there was no intent to prosecute, to make reasonable efforts to so notify the defendants. The court only addressed the issue as it applied to misdemeanors, as that was the sole issue presented on appeal.

[24] Subsequent to the issuance of the *Palomo* decision, this court addressed a related issue in *People v. Kim*, 1999 Guam 7. In *Kim*, the court found that all charges contained in the misdemeanor complaint, including those not previously listed in the citation and notice to appear, were barred from prosecution if the People failed to file a complaint before the notice to appear date. 1999 Guam 7 at ¶ 10. Although Kim was a misdemeanor case, the court's ruling is informative in demonstrating a clear determination which this court has previously set forth— to strictly construe § 25.30.

[25] Villapando argues that the statute on its face is clear, particularly in light of *Palomo*— regardless of the manner in which felonies must be prosecuted, once § 25.30 is invoked, it is the People's duty to either file a complaint or attempt to notify the defendant of non-prosecution before the notice to appear date. It is Villapando's contention that, under 8 GCA § 10.70 (1993), the prosecution of a felony may be commenced through the filing of a complaint and that, as such, § 25.30 applies to felonies as well as misdemeanors.

[26] The People attempt to complicate the matter by framing the single issue as several issues. Accordingly, the People attempt to create further "issues" by simply making arguments as to why § 25.30 should not apply to felonies. The People's arguments are as follows: (1) the manner in which felonies are mandated to be prosecuted indicates that § 25.30 is inapplicable to felonies; (2)

the court should reconsider its holding in *Palomo* because: (a) canons of statutory construction preclude a finding that § 25.30 was violated or that dismissal with prejudice is appropriate; or (b) plain meaning of § 25.30 does not indicate that the failure to prosecute is a violation of that section; or (c) to the extent that § 25.30 operates as a *de facto* SOL, there has been an implied repeal of § 25.30 by 8 GCA § 10.20 (1993); (3) application of § 25.30 may render that section unconstitutional as a violation of the doctrines of separation of powers and delegation; (4) dismissal of felonies under § 25.30 is not an available remedy.

[27] The defendants who separately filed briefs attempt to rebut the People's arguments. Additionally, Jiro raises the issue of the court's jurisdiction over his appeal based upon the People's failure to include a statement of jurisdiction in compliance with GRAP 13(j). The People refute that argument by stating that the requirements of GRAP 4.1 were met with and that such constitutes the same requirements for GRAP 13(j).[8] The court neither finds this procedural defect detrimental to the People's appeal nor does it prevent the court from addressing the issue at hand.[9]

ANALYSIS

[28] The applicable statute at issue is § 25.30 which provides as follows:

> **Notice to Appear: Where Delivered**.
> The officer shall forthwith deliver the copy of the notice to appear to the prosecuting attorney charged with the duty to prosecute the offense charged. At or before the

[8]GRAP 4.1 was not meant to replace the requirement of GRAP 13(j). Instead, GRAP 4.1 was promulgated to ensure the court's jurisdiction early on in a case and to work in conjunction with GRAP 4.

[9] The court could decide not to consider the People's Opening brief; however, because this brief is the exact same brief, substantively, as the People as the Appellee's brief in Villapando, the court is still exposed to the People's position. Additionally, pursuant to GRAP 2, the court may, in its discretion, suspend any rules, with exceptions that do not apply to these cases. The cases at bar would, if necessary, provide the court with an alternative method to review the People's brief.

time at which the person promised to appear, if the prosecuting attorney determines that the offense should be prosecuted, he shall file the notice to appear and a complaint and affidavits which satisfy the requirements of § 45.20 in the court in which the person has promised to appear. If the prosecuting attorney determines that the offense should not be prosecuted he shall make a reasonable effort to notify the person arrested that his appearance will not be required.

8 GCA § 25.30. This court in *Palomo* interpreted the statute as follows:

> Two options are available to the People in choosing how to prosecute a case. First they can proceed pursuant to 8 GCA §§ 15.10 and 15.20 by filing a complaint with affidavits to establish probable cause so that a summons will issue. In that event, section 10.30 would govern the time-line within which the case may be prosecuted. Alternatively, the People may proceed pursuant to section 25.30. Consequently, after issuing a notice to appear, the People are bound by the language of that statute. The language of section 25.30 is clear. The statute mandates action to be taken by the People prior to the notice to appear date— either to file the notice to appear and a complaint with affidavits or to make reasonable efforts to notify the defendant that he need not appear.

1998 Guam 12 at ¶ 14. In determining whether § 25.30 applies to felonies in addition to misdemeanors, the court will look to the applicable law and address each of the People's arguments.

A. Court's reconsideration of its decision in *Palomo*

1. *Stare decisis*; *Palomo* misinterprets plain reading of statute

[29] It is true, as the People claim, that the court has the ability to overturn precedent. This is the same proposition that this court espoused in *Palomo* with respect to the trial court's ruling against existing precedent. Fundamentally, the People argue overturning precedent based on the fact that *Palomo* was inadequately presented in that only the issue of § 25.30's application to misdemeanors was before the court for review. As a result, the People argue, the court could not consider the harshness of the consequences if § 25.30 applied to felonies. The People reiterate the same arguments from *Palomo* as to why § 25.30 should not now apply to felonies as well as misdemeanors; however, these same arguments were addressed in *Palomo*.

[30] The People fail to present any sound reasons which justify the reversal of *Palomo*. The People's argument that more investigation, resources and time are required in prosecuting felonies,

thereby giving cause to reverse *Palomo,* is unconvincing. The *de jure* SOL for felonies is found in 8 GCA § 10.20 which states that for all felonies, except murder, prosecution must commence within three (3) years of their commission. As we decided in *Palomo*, the *de jure* SOL is not negated by § 25.30.

[31] Rather, pursuant to § 25.30, the People have the option of informing the police to push back the notice to appear dates in order to allow the People adequate time to conduct an investigation and determine whether prosecution should be commenced. The very nature of a situation where a citation and notice to appear is issued provide the People with a known suspect. These are not crimes where the police and the People have no clue as to who may have committed them or where to begin the investigation. It is because of this inherent "head start" that the People should be able to make a determination, under § 25.30 whether to prosecute a defendant. As with misdemeanors, the People may instruct the police to set the notice to appear date further off, yet still within the applicable *de jure* SOL.[10] If felonies are so much more serious in nature, then it would logically follow that the People would not want to delay commencement of prosecution in these cases, particularly where a known suspect exists.

[32] Whereas the People are legally correct that prosecution is not commenced before the filing of a complaint or indictment, the statutes contemplate that the process is commenced when an arrest is made. This is why § 25.30 makes sense. The statute mandates that the prosecutor make a decision on prosecution and if she decides to prosecute then she must file a "complaint." If not, then she must make reasonable efforts to notify the defendant of non-prosecution.

[10]Although some trial courts have addressed the implications of the right to a speedy trial, even if a case was charged out before the notice to appear date, that issue is not presently before the court. However, such issue may emerge at a later date as a result of this and the *Palomo* decisions.

2. Implied repeal

[33] The People argue that, based upon the timing of the enactment of sections 25.30 and 10.20, the subsequent enactment of § 10.20 impliedly repealed § 25.30. However, § 25.30 is not repugnant to 8 GCA §§ 10.20 or 10.30 (1993). In fact, they work in conjunction with one another. See *Nat'l Labor Relations Bd. V. Kolkka*, 170 F.3d 837, 941 (9th Cir. 1999) (citing *Kee Leasing Co. v. McGahan (In re Glacier Bay)*, 944 F.2d 597, 581 (9th Cir. 1991) (citations and quotations omitted) (holding that "[i]n order to find irreconcilable conflict, the new statute must be clearly repugnant in work or purpose to the old statute.").

[34] As shown above, the court, in *Palomo*, viewed two options in charging out cases, misdemeanors in that case. First, the police could arrest and detain a defendant, thereby not invoking § 25.30 at all and § 10.20 would be the only time constraint placed upon the People to commence prosecution. *See* 8 GCA § 45.10 (1993). Second, the citation and notice to appear issued by the police could be issued. However, once that method of preliminary "prosecution" is invoked, then the mandates and the time-guidelines of § 25.30 and the date on which the defendant is required to appear come into play. In that regard, the statutes of limitations provided by both are not repugnant. This issue of statutory construction is one which the court previously considered in *Palomo*, but disregarded based on the foregoing analysis. Once again, at this time, the court finds no reason to reverse its previous decision in Palomo.[11]

[11]The court has had the opportunity to reconsider *Palomo* on more than one occasion, including the People's motion for reconsideration, in *Palomo.* The court, at that time, considered many of the same arguments originally advanced in *Palomo* as well as those argued in these cases. The court carefully considered such arguments and summarily denied the motion.

B. Applicability of *Palomo* to felony offenses.

[35] The People argue that the holding in *Palomo* is inapplicable to felony cases because the manner in which felonies are charged out and prosecuted is wholly different and distinct from the manner in which misdemeanors are charged and, therefore, § 25.30 does not apply to felonies. It is the People's contention that because § 25.30 refers to "complaints," whereas 8 GCA § 1.15 (1993) mandates that felonies shall by prosecuted by indictments, is indicative of a clear intent that § 25.30 does not apply to felonies. The People further contend that the prosecution of felonies, as opposed to misdemeanors, is a long and arduous process which requires more investigative time and resources; therefore, felonies were not contemplated under § 25.30 especially when the filing of a complaint in misdemeanor cases is a relatively simple task. Furthermore, the People believe it was not the Legislature's intent to require both the filing of a complaint and indictment of defendants by a grand jury, a duplicative endeavor.

[36] However, it is argued by the defendants that the statutory scheme indicates § 25.30's application to felonies. The defendants' arguments as to the issue of complaints being filed for felonies are two-fold. First the filing of the complaint is to allow the court to hold or detain a defendant upon a probable cause determination by the magistrate. A felony prosecution requires an indictment upon a probable cause determination by a grand jury. Once detained, a defendant must have an indictment of him within the (10) days or have a preliminary examination. *See* 8 GCA 45.50(b) (1993). Secondly, the defendants contend that an indictment is a complaint under § 15.10.

[37] A complaint is defined in § 15.10 as follows:

> The complaint is a written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney and filed with a judge of the Superior Court. In any case required by § 1.15 to be prosecuted by Complaint, the

> Complaint shall be subject to the same rules of pleading as an indictment or information.

8 GCA § 15.10 (1993). The question then becomes whether an indictment is a form of a complaint. An indictment contains the essential facts constituting the offenses charged, in writing, signed by the prosecutor and filed with the Superior Court. In that regard, it seems to satisfy the requirements for a complaint under § 15.10.[12] It could be construed that an indictment is a specific or more specialized type of complaint in that a complaint may simply be prepared by the prosecuting attorney after some investigation, whereas other more stringent procedures are required in order to obtain an indictment.

[38] It should also be considered that § 15.10 does not say an indictment is a form of a complaint. It delineates that an indictment is different from a complaint; however, under § 1.15, a complaint must meet the same requirements as an indictment. Also, § 1.15, does clearly state that felonies must be prosecuted through indictments whereas all other offenses shall be prosecuted by complaints.

[39] In *People v. Quinata*, 785 F.2d 812 (9th Cir. 1986), the defendant was charged as an adult for manslaughter, although he had turned eighteen (18) the day after the death. The court dismissed the case against him as he was not an adult at the time of the alleged crime. *Id.* at 813. A petition was then filed in the Juvenile Division. *Id.* The defendant made a motion to dismiss because he was no longer a juvenile. *Id.* On appeal, the Appellate Division reversed. *Id.* The defendant then appealed to the Ninth Circuit and the case was affirmed. *Id.* Upon remand, the People moved to certify

[12] 8 GCA § 55.10 (1993) states that "[t]he indictment or information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged and shall be signed by the prosecuting attorney." The note to § 55.10 reads as follows: "Chapter 55 refers throughout to the 'indictment or information;' however, §15.10 makes clear that where a complaint serves as the accusatory pleading it is subject to all these same rules of pleading." The note suggests that an indictment and complaint are, in a sense, interchangeable because they must meet the same requirements.

Quinata to be tried as an adult. *Id.* The motion was granted; however, Quinata then appealed claiming a violation of the statute of limitations. *Id.* The court found that the petition in Juvenile Court stated the essential facts and was signed by the prosecuting attorney. *Id.* at 814. Therefore, the court concluded that the petition, filed approximately a month after the death occurred, although not labeled a complaint, met the definition of a complaint and was timely filed.[13] *Id.* at 814. "A petition in the Juvenile Division, like a complaint or indictment in the Adult Division, is meant to inform the defendant of the offense the state accuses him of having committed." *Id.* at 813. The Ninth Circuit also makes a reference to complaints and indictments being alike. *Id.*

[40] The reasoning behind the *Quinata* decision is clear. The court looked to the definition of a complaint and found the petition satisfied that definition. This court was result oriented in that it made reference to the fact that "[w]ere [the court] to accept appellant's argument, a juvenile offender like Quinata could go free by pursuing numerous motions and appeals to delay the prosecution." *Id.* at 814.

[41] The People argue that the holding in *Quinata* does not speak to prosecutions as envisioned by § 25.30 nor does it provide for dismissal of a case not filed under § 25.30. This may be true, however, we may look to *Quinata* in our determination of whether an indictment can be construed as a complaint under the current statutory scheme. All consequences which flow from that determination may or may not be part and parcel of the determination itself. Unquestionably more work is involved in prosecuting a felony; however, this does not mean that statutory limitations should be ignored in order to give the People an additional time.

[13]The court simply stated: "The petition is not labelled [sic] a complaint because, under the Juvenile Division's rules, the document filed to start a criminal proceeding against a juvenile must be designated a petition." *Id.* at 814. (citation omitted).

[42] As to the argument of whether the statutory scheme demonstrates that § 25.30 is applicable to felonies, several statutes under Title 8 must be examined. 8 GCA § 25.50 (1993) provides as follows:

> § 25.50. Wilful Failure to Appear: Felony if Offense Underlying Notice is Felony; Misdemeanor if Offense Misdemeanor. Any person who wilfully **violates his written promise to appear** in court is:
> (a) guilty of a felony; if he was released in connection with a charge of felony.
> (b) guilty of a misdemeanor, if he was released in connection with a charge of any offense not a felony. (emphasis added).

Chapter 25 of Title 8 refers to citations. Section 25.50 contemplates the application of citations to both felonies and misdemeanors. For example, should a defendant fail to appear pursuant to the notice to appear, he will be subject to an additional felony or misdemeanor charge.

[43] It is the People's contention that 8 GCA § 45.20 (1993), a section entitled "Complaint to be Filed; When," applies only to misdemeanor cases. However, subsection (b) refers to a grand jury, indicating the application to both felony and misdemeanor charges.

> (b) At or before the time of the defendant's first appearance pursuant to § 45.30, if no determination has previously been made by the court or grand jury that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the court shall make such determination in the manner provided by §§ 15.20 and 15.30. . . .

Additionally, referring to 8 GCA § 45.30 (1993), the section governing first appearances by defendants, the statute once again contemplates application to misdemeanors and felonies.

> § 45.30. First Appearance; Statement by Court; Public Defender Allowed. (a) At the time the defendant is brought before the court pursuant to § 45.10 or appears pursuant to a summons issued pursuant to Chapter 15 (commencing with § 15.10) or a notice to appear pursuant to § 25.20, the court shall inform the defendant;
>
> (1) of the complaint against him and of any affidavits filed therewith.
>
> (2) of his right to retain counsel.
>
> (3) of his right to request the assignment of counsel if he is unable to obtain counsel.
>
> (4) of the general circumstances under which he may secure his pretrial release.
>
> (5) of his right to prosecution by indictment, where such right is available.
>
> (6) of his right to a preliminary examination, where such right is available.
>
> (7) that he is not required to make a statement and that any statement made by him may be used against him.

8 GCA § 45.30. All cases are subject to § 45.30. As such, although subsection (a)(1) states that the court shall inform the defendant of the complaint against him, it could be construed that a "complaint" also includes indictments. Otherwise, the word complaint, is not being utilized as

defined in the previous chapters of Title 8. The fact that subsections (a)(5) and (6) only apply to felonies cannot act to mean that subsection (a)(1) only contemplates misdemeanors because the language in subsections (a)(5) and (6) indicates that such may not be applicable in all cases, only those where the rights are available.

[44] Upon review, it seems clear that the overall statutory scheme indicates that § 25.30 is applicable to felony, as well as misdemeanor, cases calling for the holding in *Palomo* to extend to the cases at bar.

C. Separation of Powers

[45] The People base their argument on the concept of prosecutorial discretion, a well-founded principle in the modern judicial system. The authority to prosecute is vested in a prosecuting attorney pursuant to 8 GCA § 5.60 (1994). The People argue that reading § 25.30 as creating a *de facto* SOL for felonies, and even misdemeanors, leads to an unreasonable infringement upon, by being burdensome or interfering with, the Attorney General's ability to exercise prosecutorial discretion. Therefore, the court's interpretation violates the doctrine of separation of powers by imposing a duty on the People where the Legislature intended none and where the prosecution of crimes is wholly under the province of the Executive Branch.

[46] The People cite the case of *Heckler v. Chaney*, 470 U.S. 821, 105 S.Ct. 1649 (1985) wherein prison inmates, who faced death by lethal injection, petitioned the Food and Drug Administration (FDA) to make a determination that the use of drugs in that manner constituted a violation of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 301 *et seq*. The FDA refused to prosecute and the U.S. Supreme Court upheld such a decision based on the agency's power for absolute discretion

in such matters. *Id.* at 830, 105 S.Ct. at 1655.

[47] The People claim that the case at bar is similar to *Heckler* in that this court's finding of a *de facto* SOL interferes with the discretionary authority of the Attorney General's office by creating a coercive effect upon the prosecutors who will otherwise face dismissal of cases.

[48] Although it is true that prosecutorial discretion is far reaching, the circumstances of these cases and those posed under § 25.30 do not affect this concept. True, the decision whether to prosecute a case is a decision left to the prosecuting authority; however, the decision when to prosecute a case is not a decision of which a prosecutor enjoys unlimited discretion in determining. Clearly, SOLs are present throughout criminal and civil law. Causes of action must be brought within statutory time frames, otherwise prosecution of such claims are barred forever. In *Palomo*, the court noted "[w]hile 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." *Palomo*, 1998 Guam 12 at ¶ 14.

[49] Section 25.30 does not take away the discretionary authority of the prosecuting attorney to decide which cases to prosecute, that determination is still left within the discretion of the Attorney General's Office. Instead, § 25.30 only places additional time limitations when prosecution is undertaken in a certain manner. What the People fail to realize is that time limitations have always been imposed upon them, not only under §§ 10.20 and 10.30, but also under § 25.30, although such had not previously been followed until *Palomo* was decided.

[50] Here we find there is no violation of the doctrine of separation of powers by the judicial branch. As stated in *Palomo*, "the problem exists not with the judicial system, but instead with the

Legislature." *Palomo*, 1998 Guam 12 at ¶ 17. However, because prosecutorial discretion as to which cases to prosecute is not infringed upon, even the Legislature cannot be blamed for the consequences which can and will occur if the government ignores § 25.30.

D. Dismissal as an improper remedy.

[51] The People also ask this court to revisit an already addressed issue in *Palomo*; to wit, what constitutes a proper remedy for a violation of § 25.30. The People cite case law which notes that dismissal, with prejudice, is an extremely harsh and disfavored result and that, absent some showing of actual prejudice, such a remedy is disallowed. While it is true that § 25.30 is silent as to what remedy should result and that other code sections do address the issue of when cases should be dismissed and that those sections do not mention § 25.30, this issue was previously addressed in *Palomo* and reasoned as follows.

[52] In *Palomo*, this court noted the disfavoring of dismissals with prejudice. *Palomo*, 1998 Guam 12 at ¶ 17. However, "[i]n the absence of other remedies, courts are able to fashion procedural rules they determine fair and just when 'rights would be lost or the court would be unable to function.'" *Id.* at ¶ 15. (citation omitted). Although dismissal without prejudice was an option for this court's consideration, and trial courts had previously imposed such sanctions upon the government in other cases, this court viewed such a remedy as ineffective. *Id.* at ¶ 16. Characterizing § 25.30 as a *de facto* statute of limitations, the court interpreted § 25.30 as a bar to prosecution, as would a failure to commence prosecution under §§ 10.20 and 10.30. As to the issue of prejudice, this court also addressed that argument in *Palomo*. The court opined as follows: "The court is mindful of the fact that case law exists in which courts have addressed the issue of dismissals with prejudice as opposed to dismissals without prejudice. Because this situation involves a statutory bar to re-prosecution, a showing of prejudice or any other factors which support dismissal with prejudice are unnecessary." *Id.* at n.8. In *Palomo*, the court also considered the findings of the trial court wherein the trial court noted that defendants would suffer prejudice in terms of the lengthy

delay in commencement of prosecution leading to the absence of witnesses, the loss of memory and the anguish in appearing at court on the date of the notice to appear, not finding themselves on the calendar and being told to go home, then living in the belief that the threat of prosecution was eliminated. These are all similar arguments which the defendants in these cases also allege.

[53] The People argue that *mandamus* is the proper remedy for a defendant— that somehow it becomes the responsibility of a defendant to petition this court to order the government to commence prosecution against himself. *Mandamus* is not a reasonable remedy for defendants. In fact more prejudice will result in causing a defendant to have to file a petition on his own behalf or hire an attorney to do so for the sole purpose of placing himself in a position to be prosecuted and possibly convicted. The responsibility is then shifted from the People to prove a case against a defendant to the defendant having to instigate an action against himself.

[54] As previously stated, the difference between the situation where § 25.30 operates is that a suspect is readily available. There is no additional time necessary to investigate in order to even find a suspect. Additionally, this court previously alluded to the fact that it is within the purview of the Legislature to make statutory changes to an ill-conceived statutory scheme.

CONCLUSION

[55] The court stands behind its decision in *Palomo*, for it was thoughtfully considered at that time. Had the court hastily decided *Palomo*, then perhaps the People's arguments would have had more merit. However, the court, although at the time only addressing misdemeanors, was aware of the fact that the issue would eventually arise with respect to the application of § 25.30 to felonies. The court was well aware of the harsh results which possibly could occur and in fact said as much

in the opinion itself.

[56] This court's prior reasoning shall stand and shall now be made to extend to felony cases under § 25.30. Villapando should therefore be **REVERSED** and **REMANDED** for proceedings consistent with this opinion and the remaining cases **AFFIRMED** pursuant to § 25.30, *Palomo* and *Kim*.

PETER C. SIGUENZA
Associate Justice

JOHN A. MANGLONA
Associate Justice

BENJAMIN J. F. CRUZ
Chief Justice