

**IN THE SUPREME COURT OF GUAM**

**PEOPLE OF GUAM**

Plaintiff-Appellee

**vs.**

**GERALD VINCENT LEON GUERRERO**

Defendant-Appellant

**OPINION**

Supreme Court Case No. CRA99-026

Superior Court Case No. CF0036-93

**Filed: August 16, 2001**

**Cite as: 2001 Guam 19**

Appeal from the Superior Court of Guam

Submitted on January 17, 2001

Hagåtña, Guam

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BEFORE: PETER C. SIGUENZA, JR., Chief Justice (Acting)<sup>1</sup>; F. PHILIP CARBULLIDO, Associate Justice; and JOHN A. MANGLONA, Designated Justice.

**CARBULLIDO, J.:**

[1] On October 18, 1993, after a trial by jury, the Appellant, Gerald Vincent Leon Guerrero (hereinafter “Leon Guerrero”) was convicted of the offenses of Kidnapping (As a First Degree Felony), Aggravated Assault (As a Third Degree Felony) and Possession of a Firearm Without a Firearm Identification Card (As a Felony). The jury additionally found Leon Guerrero guilty of the Special Allegation of the Use of a Deadly Weapon in the Commission of a Felony for each of the first two charges. Appellate counsel has filed an *Anders* brief stating that he does not believe that Leon Guerrero has any basis for appeal. *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967).

[2] The *Anders* brief submits that four arguable issues for appeal may exist: (1) whether Leon Guerrero was deprived of the effective assistance of trial counsel; (2) whether the trial court erred in overruling certain evidentiary objections; (3) whether there was sufficient evidence to sustain Leon Guerrero’s conviction; and, (4) whether Leon Guerrero was competent to stand trial. We have independently reviewed the record and the issues raised by counsel in the *Anders* brief. We conclude that no meritorious issue for review has been raised. Pursuant to the procedures set forth in *Anders*, we dismiss this appeal as frivolous.

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<sup>1</sup> The Chief Justice recused himself from deciding this matter. Justice Siguenza as the senior member of the panel was designated as the acting Chief Justice.

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I.

[3] On or about February 4, 1993, Leon Guerrero confronted Jesse Pablo Cordero (hereinafter “Cordero”) immediately after Cordero dropped Leon Guerrero’s girlfriend, Angela Taitano (hereinafter “Taitano”) at her residence in Yigo. Leon Guerrero exited his vehicle and entered Cordero’s vehicle and directed Cordero to drive to a nearby remote area. An individual identified as Jack Hanson, driving Leon Guerrero’s vehicle, followed Leon Guerrero and Cordero to a jungle area on a dirt road off the main road.<sup>2</sup> After Leon Guerrero questioned Cordero regarding his relationship with Taitano, he retrieved a rifle from his car. Leon Guerrero struck Cordero three times with the rifle and ordered him into the trunk of Cordero’s car. Fearing for his life, Cordero entered the trunk of his car.

[4] Around the time that the vehicles entered the area, an alert neighbor phoned the police. Upon arriving, the police confronted Leon Guerrero, who had blood-stained hands, and began to question him. Meanwhile, Cordero was able to escape from the trunk of his car and ran out of the jungle area to the main road. Cordero immediately identified Leon Guerrero as the individual who had assaulted him. The police discovered a rifle in Leon Guerrero’s vehicle. The rifle had a portion of the wood stock broken off due to Leon Guerrero’s use of the rifle in beating Cordero. The police also discovered that the back seat of Cordero’s vehicle had been pushed forward by Cordero in an effort to escape from the trunk.

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<sup>2</sup> The court notes that there is a discrepancy in the spelling of Jack Hanson’s name. In the transcripts, the name is sometimes spelled either “Hansen” or “Hanson”, whereas the name is spelled “Hanson” in the Appellant’s Opening Brief.

[5] The Territorial Grand Jury indicted Leon Guerrero on charges of Kidnapping (As a First Degree Felony), Aggravated Assault (As a Third Degree Felony), two counts of Possession of a Firearm Without a Valid Firearms Identification Card (As a Felony), and Special Allegation of the Use of a Deadly Weapon in the Commission of a Felony for each of the first two charges. The case proceeded to trial and the jury found Leon Guerrero guilty of all the charges except one count of Possession of a Firearm Without a Firearm Identification Card. The court sentenced Leon Guerrero to twenty-five years imprisonment at the Department of Corrections for his conviction of the Kidnapping charge and an additional five years, to be served consecutively, for the Special Allegation. The court further sentenced Leon Guerrero to five years for the conviction of Aggravated Assault, to be served concurrently with the imprisonment imposed for the Kidnapping charge, but declined to impose a sentence for the attendant Special Allegation. Finally, the court imposed a sentence of five (5) years for the conviction of the Possession charge to be served concurrently with the aforementioned sentences. Thereafter, the court heard oral arguments concerning a motion to reduce sentence. Subsequently, the court issued an order reducing Leon Guerrero's sentence.

[6] Leon Guerrero failed to file a timely Notice of Appeal; however, he subsequently brought a *habeas corpus* proceeding before the Superior Court in order to reinstate his right to appeal. Both Leon Guerrero and the Prosecution Division of Attorney General's Office stipulated to the dismissal of the *habeas* petition on the condition that the original judgment be vacated and re-entered *nunc pro tunc* to December 1, 1993. The Superior Court entered an order to that effect, and Leon

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Guerrero filed a timely Notice of Appeal. The court ordered Matthew T. Gregory, Esq., to remain as counsel for Leon Guerrero. Counsel filed a declaration in support of a motion to withdraw as counsel pursuant to *Anders*.

[7] The court subsequently issued an Order outlining the procedural requirements for properly filing an *Anders* brief and Motion to Withdraw that usually follows. Accordingly, appellate counsel filed an *Anders* brief outlining the possible issues for appeal. The court then ordered appellate counsel to file a motion for leave for Leon Guerrero to file a brief, *in pro per*, should Leon Guerrero choose to raise any issues he believed existed. The motion was made and granted. However Leon Guerrero, having missed the deadline to file his brief, sought an extension which the court granted. When the extension expired, appellate counsel filed a second motion to extend time. Finding that the sixty-three days it had given Leon Guerrero was sufficient time to file a brief *in pro per*, this court denied the motion and began its independent review of the record as set forth by *Anders*.

## II.

[8] This court has jurisdiction over this matter pursuant to 7 GCA §§ 3107 (1994).

## III.

[9] *Anders v. California* sets forth the procedures to be followed when court-appointed counsel seeks to withdraw from a seemingly frivolous appeal. In *Anders*, the attorney performed a conscientious evaluation of the merits of the defendant's appeal finding that there were none. The

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attorney submitted a “no-issue letter” to the court pursuing no further appeal. The Supreme Court criticized the attorney’s actions, finding that the attorney had acted more as *amicus curiae* rather than active advocate. The Court held that “[t]he constitutional requirement of substantial equality and fair process can only be attained where counsel acts in the role of an active advocate in behalf of his client. . . .” *Id.* 386 U.S. at 744, 87 S.Ct. at 1400. The Court held:

[I]f counsel finds his case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw. That request must, however, be accompanied by a brief referring to anything in the record that might arguably support the appeal. A copy of counsel’s brief should be furnished to the indigent and time allowed him to raise any points that he chooses; the court - not counsel - then proceeds, after full examination of all the proceedings, to decide whether the case is wholly frivolous.

*Id.* at 744-45; 87 S.Ct. at 1400.

[10] The Supreme Court revisited the *Anders* decision in *Penson v. Ohio*, 488 U.S. 75, 109 S.Ct. 346 (1988). The Court in *Penson* ruled that if after review of the record the court finds that there is an arguable issue anywhere in the appeal, it must appoint new counsel. These cases stipulate that the court must conduct a full and independent review of the record to determine if it supports any arguable ground for appeal. *Anders*, 386 U.S. at 744, 87 S.Ct. at 1400; *Penson*, 488 U.S. at 82-83, 109 S.Ct. at 351. In compliance with these procedures this court has reviewed the record and the following issues.

#### **A. Ineffective Assistance of Counsel**

[11] “A claim of ineffective assistance of counsel is a mixed question of law and fact that is reviewed *de novo*.” *Angoco v. Bitanga*, 2001 Guam 17, ¶ 7 (citation omitted) (determining the

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validity of the defendant-appellant's claim of ineffective assistance of appellate counsel); *see also* *United States v. Quintero-Barraza*, 78 F.3d 1344, 1347 (9th Cir 1995) (reviewing a claim of ineffective assistance of counsel on direct review *de novo*). We review such claims in accordance with the two-pronged test articulated in the United States Supreme Court case of *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). The *Strickland* test requires that in order to prove ineffective assistance of counsel a defendant must demonstrate: (1) that trial counsel's performance was deficient; and (2) that the deficient performance prejudiced his defense. *Id.* at 687, 104 S.Ct. at 2064. With respect to the first prong, the appellate court must "judge the reasonableness of counsel's challenged conduct on the facts of the particular case," viewed at the time of the conduct. *People v. Kintaro*, 1999 Guam 15, ¶12 (citations omitted). Further, a convicted defendant making a claim of ineffective assistance of counsel must identify the acts or omissions of counsel that are alleged to be the result of unprofessional conduct. *Id.* Trial counsel's choice of strategy does not amount to ineffective assistance of counsel. *Angoco*, 2001 Guam 17 at ¶ 9. In reviewing a claim of ineffective assistance of counsel, the decisions of trial counsel are accorded much deference. *Id.* Finally, unless a showing of deficient performance is made then there is no need to address the prejudice prong of the inquiry. *People v. Perez*, 1999 Guam 2, ¶35.

[12] Although an ineffective assistance of counsel claim may be heard on direct appeal, this court has previously held that it is more properly brought as a writ of *habeas corpus*. *People v. Root*, 1999 Guam 25, ¶14 (citing *People v. Ueki*, 1999 Guam 4, ¶5). This is so because such claims require an "evidentiary inquiry beyond the official record." *Id.* The court has, however, reviewed such claims

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if the record is sufficiently complete to make a proper finding. *Id.* Here the record is sufficiently complete to determine if there was ineffective assistance of counsel concerning the issues raised.

[13] In this case, Leon Guerrero’s appellate counsel raises three potential issues of ineffective assistance of trial counsel: (1) failure to suppress Leon Guerrero’s confession; (2) failure to move for a directed verdict; and, (3) failure to call certain witnesses. Each is discussed below.

### **1. Failure to Suppress Leon Guerrero’s Confession**

[14] The first potential issue articulated by appellate counsel is the ineffective assistance of trial counsel in failing to make a motion to suppress statements Leon Guerrero made to the police. “In the context of a potential pretrial motion counsel has a duty to research the law, investigate the facts and make the motion in circumstances where a diligent and conscientious advocate would do so.” *People v. Gonzalez*, 64 Cal. App. 4th, 432, 437, 75 Cal. Rptr. 2d 272, 275 (Ct. App. 1998) (citations omitted). However, to prove prejudice a defendant must do more than show that a motion was meritorious; he must also show that the motion would have been successful. *Id.* at 438, 75 Cal. Rptr. 2d at 275-76 (internal citation omitted).

[15] “The Fifth Amendment of the United States Constitution provides that no person ‘shall be compelled in any criminal case to be a witness against himself.’” *People v. Hualde*, 1999 Guam 3, ¶ 20 (citing U.S. CONST. amend. V). This privilege attaches when the government subjects an individual to custodial interrogation. *Id.* (citing *Miranda v. Arizona*, 384 U.S. 436, 460-461, 86 S.Ct. 1602, 1620-1621 (1966)).0



[16] The record indicates that a motion to suppress on the basis of coercive police activity violating the Fifth Amendment might have been made by trial counsel. At the time of counsel's decision not to make a motion to suppress, counsel knew that Leon Guerrero was advised of his rights under *Miranda* at the scene of the crime by Officer Paulino. Transcript, vol. IV, p. 23 (Trial, Oct. 13, 1993). According to Paulino, Leon Guerrero wanted to tell him what had transpired. Transcript, vol. IV, p. 24 (Trial, Oct. 13, 1993). Leon Guerrero stated that he was trying to stop a fight between Cordero and Hansen. Transcript, vol. IV, pp. 29-30 (Trial, Oct. 13, 1993). Paulino testified that he again advised Leon Guerrero via the Custodial Interrogation Form, and that there was no confusion regarding the rights read to him. Transcript, vol. IV, p. 34 (Trial, Oct. 13, 1993). Leon Guerrero, however, testified that he had been confronted by the police, was at the scene of the crime for two to three hours and was yelled at and interrogated by the officers. Transcript, vol. V, p. 68-69 (Trial, Oct. 13, 1993).

[17] However, Leon Guerrero's statements at the scene of the crime provided the single theory absolving him of guilt; namely, that Hanson was the perpetrator of the crime. Accordingly, trial counsel's decision not to challenge the admissibility of these statements appears reasonable. *Cf. Angoco*, 2001 Guam 17 at ¶ 9 (holding that counsel's choice of strategy does not amount to ineffective assistance). Trial counsel may have anticipated that the statements made to the police would corroborate Leon Guerrero's testimony at trial and buttress his claim that another individual was responsible for attacking Cordero. Given the deferential nature of this court's review in an ineffective assistance of counsel claim, trial counsel's decision not to make a suppression motion

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was reasonable.

[18] Furthermore, even if this decision had been unreasonable, it would not have caused prejudice. “To demonstrate prejudice, the defendant has the burden of proving that, ‘there is a reasonable probability that but for counsel’s unprofessional errors, the result of the proceedings would have been different.’” *Laboa v. Calderon*, 224 F.3d 972, 981 (9th Cir. 2000) (citation omitted). A reading of the record indicates that the key evidence against Leon Guerrero was not the statements he made to the police, but rather, the testimony of the victim. Thus, the victim’s testimony would have been sufficient to support the conviction even absent the statements Leon Guerrero made to the police. *Cf. In Re N.A.*, 2001 Guam 7, ¶ 59 (holding that the error in admitting evidence was harmless in light of the other evidence which supported the judgment). Moreover, any error in admitting the testimony was harmless because even assuming that the trial court could have held that the statements were obtained in violation of *Miranda*, the statements would have been admissible to impeach Leon Guerrero when he testified. *See Harris v. New York*, 401 U.S. 222, 225-26; 91 S.Ct. 643, 645-46 (1971).

## **2. Failure to Move for Judgment of Acquittal**

[19] Another possible issue is ineffective assistance of counsel for failure to make a motion for judgment of acquittal. Although appellate counsel noted that it is a common practice to make such a motion, he also asserted that it was harmless in this case given the magnitude of evidence against Leon Guerrero. We agree.

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[20] In reviewing whether an acquittal was warranted as a matter of law, we must review the evidence presented against the defendant in a light most favorable to the government to determine whether any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *People v. Camacho*, 1999 Guam 27, ¶ 40; *People v. Cruz*, 1998 Guam 18, ¶ 19. In this case trial counsel made a motion for directed verdict at the close of the government's case arguing that the evidence for the Possession charges was insufficient. Transcript, vol. VI, p. 10 (Trial, Oct. 15, 1993). The trial court denied the motion. Transcript, vol. VI, p. 13 (Trial, Oct. 15, 1993). Trial counsel's failure to renew the motion does not implicate trial strategy. Therefore, we must decide whether the failure to make a motion for acquittal prejudiced the defendant. If the case was properly submitted for consideration by the jury, as opposed to one which would have been decided in the defendant's favor by the trial judge prior to the submission to the jury, then the error does not amount to ineffective assistance of counsel. *Cf. Quintero-Barraza*, 78 F.3d at 1350-51.

[21] With respect to Leon Guerrero's possession of a valid firearm identification card, the government called Officer Linda James. She testified that Leon Guerrero did not have a valid card at the time of the charges. Transcript, vol. V, pp. 13-14 (Trial, Oct. 13, 1993). Although the earlier motion indicates that evidence was lacking on the possession charges, the jury acquitted Leon Guerrero of one of these charges, the offense allegedly committed between December 26, 1992 and December 31, 1992. With respect to the Kidnapping, Aggravated Assault, and Special Allegations, there was more than enough evidence before the jury to support the convictions. In addition to the testimony of the victim Cordero, there are accounts from the officers who arrived at the scene.

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Cordero was observed staggering out of the jungle area bleeding from his injuries. Transcript, vol. IV, p. 86-87 (Trial, Oct. 13, 1993). Furthermore, one of the officers testified that he slipped in and out of consciousness while at the scene. Transcript, vol. III, p. 204 (Trial, Oct. 12, 1993). The doctor who treated Cordero testified that his injuries were the result of blunt trauma and consistent with being inflicted by a rifle. Transcript, vol. V, p. 7 (Trial, Oct. 14, 1993). Given the extent of the evidence against Leon Guerrero, a motion for acquittal would not have been successful. Therefore, there was no prejudicial error in trial counsel's failure to move for judgment of acquittal.

### **3. Failure to Call Witnesses Jack Hansen and Mark Angoco**

[22] Appellate counsel indicated that there might have been ineffective assistance for failure to call two witnesses, Jack Hanson and Mark Angoco. A major component of Leon Guerrero's defense was that an individual named Jack Hanson had assaulted and confined Cordero. Leon Guerrero identified Hanson to the officers who arrested him. The officers testified that they searched the area around the scene for a third party. Transcript, vol. IV, p. 28 (Trial, Oct. 13, 1993). Cordero testified that another individual, presumably Hanson, had followed them to the scene in Leon Guerrero's vehicle, but that this was the extent of his interaction with them. Transcript, vol. III, p. 56,59,62,66-67 (Trial, Oct. 12, 1993). Given the nature of Hanson's involvement in the altercation as testified by Cordero and his possible adversarial position with Leon Guerrero, trial counsel reasonably decided that Leon Guerrero was better off without Hanson at trial. *See Angoco*, 2001 Guam 17 at ¶ 9 (holding that trial counsel is presumed to have rendered adequate assistance and counsel's strategy decisions does not amount to ineffective assistance).

[23] With respect to the failure to call Mark Angoco, appellate counsel concedes that he was a material witness, but the nature and extent of his relationship to this case were not disclosed. Further, trial counsel indicated that a subpoena had been issued for Angoco; however, he had not appeared and it was counsel's belief that he would not be a cooperative witness. Transcript, vol. V, p. 37 (Trial, Oct. 14, 1993). Thus, it was a reasonable strategy for trial counsel not to call Angoco. *See Angoco*, 2001 Guam 17 at ¶ 9.

## **B. Overruled Evidentiary Objections**

[24] A trial court's evidentiary rulings are reviewed for an abuse of discretion. *People v. Fisher*, 2001 Guam 2, ¶ 7. An abuse of discretion is found if an appellate court has a definite and firm conviction that the ruling was in clear error. *People v. Quinata*, 1999 Guam 6, ¶ 17. Appellate counsel raises the following overruled evidentiary objections as possible grounds for appeal, but maintained that an appeal on these grounds would be frivolous. We agree.

### **1. Testimony of the Joint Bank Account**

[25] The prosecutor elicited testimony regarding the existence of a joint savings account between Leon Guerrero and Angela Taitano despite objections made by trial counsel. However, counsel alleges that this evidence was admissible because it was indicative of the motive behind Leon Guerrero's actions.

[26] Relevant evidence is admissible except as otherwise excluded by the Rules of Evidence, an act of the Guam Legislature or the Constitution of the United States. Title 6 GCA § 402 (1995). Relevant evidence is "evidence having any tendency to make the existence of any fact that is of

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consequence to the determination of the action more probable or less probable than it would be without the evidence.” Title 6 GCA § 401 (1995). A trial court’s ruling on the relevance of evidence is reviewed for an abuse of discretion. *United States v. Easter*, 66 F.3d 1018, 1020 (9th Cir. 1995). The evidence of a joint bank account was offered to show the bias and motive of Leon Guerrero who was testifying. Since the premise of Leon Guerrero’s attack on Cordero was jealousy of his relationship with Taitano, this evidence was probative of Leon Guerrero’s motivation for the crime and, therefore, relevant.

## **2. Admission of the Photograph**

[27] The court denied a defense motion to exclude an enlarged photo of the victim’s head showing his injuries. Leon Guerrero’s objection was based on Rule 403 of the Guam Rules of Evidence which provides: “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Title 6 GCA § 403 (1995). Trial counsel’s objection was that there was sufficient evidence of the injury, and that the photo was therefore cumulative. Transcript, vol. V, p. 38 (Trial, Oct. 14, 1993).

[28] A trial court’s ruling on the admission of photographs under Rule 403 and its decision balancing the probative value of evidence against the prejudicial effect are reviewed for an abuse of discretion. *Fisher*, 2001 Guam 2 at ¶ 15. The trial court is given wide latitude in determining the admissibility of evidence under Rule 403. *See id.* (holding that a trial court’s Rule 403

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determination is reviewed with “considerable deference”) (citation omitted). The prosecution argued that the probative value of the photograph at issue was to demonstrate the nature and extent of the victim’s injuries. Transcript, vol. V, p. 39 (Trial, Oct. 14, 1993). The scene depicted in the photograph was the stitches on the victim’s head. Transcript, vol. V, p. 38 (Trial, Oct. 14, 1993). A review of the record indicates that this evidence was corroborative of the victim’s testimony that was challenged by Leon Guerrero. It was therefore highly probative. Moreover, there is no indication that the photograph depicted details of the injuries that were so gory as to inflame the jury. Therefore, an appeal on the admission of the photo as evidence would lack merit.

### **3. Admission of the Firearms Identification Card**

[29] Trial counsel also objected to the admission of Leon Guerrero’s expired firearms identification card and a firearm registration document for the rifle used in the attack. Trial counsel argued that those items should be excluded, because they were not given to him until the morning of trial. Transcript, vol. V, p. 39 (Trial, Oct. 14, 1993). The *Brady Rule* holds that “due process calls for the disclosure of evidence favorable to the government that is material to guilt or punishment.” *Fisher*, 2001 Guam 2 at ¶ 12 (citing *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196-97 (1963)). We review an alleged *Brady* violation *de novo*. *Id.* Under *Brady*, the evidence withheld must be material. *People v. Reyes*, 1999 Guam 11, ¶17. “Evidence is material only if there is a reasonable probability that had it been disclosed to the defense, the result of the proceeding would have been different.” *Id.*

[30] In this case the documents objected to should have been provided to Leon Guerrero. *See* Title 8 GCA § 70.10(a)(4) (1993). However, prior disclosure would not have affected the outcome of the case. Even if the documents had been excluded, there was still sufficient evidence to convict for the possession charges. Testimony had been elicited that Leon Guerrero's firearms identification card was no longer valid. Transcript, vol. V, p. 13-14 (Trial, Oct. 14, 1993). In addition, testimony had also been introduced that the firearm was registered to another individual. Transcript, vol. V, p. 15 (Trial, Oct. 14, 1993). Therefore, an appeal of the admission of the firearms identification card would be frivolous.

#### **4. Inquiry into Past Ownership of Firearms**

[31] The prosecutor in this case was allowed to question Leon Guerrero during cross-examination about his past ownership of several firearms. Trial counsel objected on the grounds that the ownership of those firearms had occurred two years ago and was irrelevant. Since this questioning regarded the weapons possession charges of which Leon Guerrero was acquitted, there is no issue for appeal here.

#### **C. Insufficiency of the Evidence**

[32] On a review of the sufficiency of the evidence to support a criminal conviction the critical inquiry is to determine whether the evidence on record could reasonably support a finding of guilt beyond a reasonable doubt. *People v. Reyes*, 1998 Guam 32, ¶ 7 (citation omitted). "When a criminal defendant asserts that there is insufficient evidence to sustain the conviction, this court reviews the evidence in the light most favorable to the prosecution to ascertain whether any rational



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trier of fact could find the essential element of the crime beyond a reasonable doubt.” *Id.* This is the same test used to determine if there was ineffective assistance of counsel for failure to move for a judgment of acquittal discussed *supra*. As provided in that section, an appeal in this case on the sufficiency of the evidence would lack merit in light of the substantial evidence presented against Leon Guerrero.

#### **D. Competency to Stand Trial**

[33] The final issues discussed in the *Anders* brief for this case are Leon Guerrero’s competency to stand trial, and a possible ineffective assistance of counsel for failing to raise this defense. Generally the “[t]est for competency to stand trial is whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as a factual understanding of the proceedings against him.” *Boag v. Raines*, 769 F.2d 1341, 1343 (9th Cir. 1985) (internal citations omitted). Also, claims of ineffective assistance of counsel are rejected where there is reliance upon the conclusions of mental health experts that there was no evidence that could serve as a basis of a mental defense. *Hendricks v. Calderon*, 70 F.3d 1032, 1039 (9th Cir. 1995).

[34] The first mention in the record of any potential issue with Leon Guerrero’s competency to stand trial was at the bail hearing when it was disclosed that the court had earlier signed a stipulated order for a psychiatric examination of Leon Guerrero. Transcript, vol I, pp. 36-37 (Bail Hearing, Mar. 29, 1993). The court ordered that reports were to be submitted by a neurologist, Dr. K.M. Chen, and a psychologist, Dr. James Kiffer. Transcript, vol I, p. 43 (Further Proceedings, Jul. 6,

1993). At the continued pre-trial conference it was also disclosed to the court that Dr. Kirk Bellis had prepared a report filed in June of 1993. Transcript, vol I, pp. 55-56 (Pre-Trial Conference, Sept. 24, 1993). At this hearing, trial counsel informed the court that he had spoken with Dr. Kiffer who had expressed some concern on the issue. Transcript, vol. I, p. 55 (Pre-Trial Conference, Sept. 24, 1993). Because of this, the court ordered the transfer of Leon Guerrero to the Department of Mental Health and Substance Abuse for observation and an update. Transcript, vol I, pp. 60-61 (Pre-Trial Conference, Sept. 24, 1993). After observation at Mental Health, there was no further mention of the issue.

[35] Leon Guerrero was examined by three doctors and finally observed at Mental Health, before it was determined that he was competent to stand trial. The record indicates that Leon Guerrero was thoroughly evaluated and no basis for a defense was presented. Because trial counsel relied upon the opinions of mental health experts, there is no valid issue of ineffective assistance regarding competency to stand trial. Furthermore, Leon Guerrero's own actions indicate that he had a rational understanding of the proceeding against him. Leon Guerrero testified on his own behalf at trial. Transcript, vol. V, p. 42 (Trial, Oct. 14, 1993). Also, Leon Guerrero coined the primary theory of his own defense, that it was Jack Hanson who assaulted Cordero instead of himself. Based on our examination of the record, we are satisfied that Leon Guerrero was competent to stand trial and that an appeal on this issue would lack merit.

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**IV.**

[36] After reviewing the record and appellate counsel's brief in compliance with the procedures established by *Anders*, this court agrees that an appeal on this case would be frivolous. The case is **DISMISSED** and counsel's Motion to Withdraw is hereby **GRANTED**.

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JOHN A. MANGLONA  
Designated Justice

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F. PHILIP CARBULLIDO  
Associate Justice

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PETER C. SIGUENZA, JR.  
Chief Justice (Acting)