IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

JESSE PAMA ORALLO,
Defendant-Appellant.

OPINION

Supreme Court Case No. CRA05-001
Superior Court Case No. CF0239-99

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Appeal from the Superior Court of Guam
Argued and submitted on February 27, 2006
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; FRANCES M. TYDINGCO-GATEWOOD, Associate Justice; ROBERT J. TORRES, JR., Associate Justice.

TYDINGCO-GATEWOOD, J.:

[1] Defendant-Appellant Jesse Pama Orallo appeals from the trial court's judgment of conviction on: (1) three counts of first degree criminal sexual conduct; (2) three counts of second degree criminal sexual conduct; (3) one count of third degree sexual criminal conduct; and (4) one count of fourth degree sexual criminal conduct. Orallo argues that this court should reconsider its holding in *People v. Orallo*, 2004 Guam 5 (*Orallo I*). We decline to do so and affirm the trial court's judgment.

I.

[2] We incorporate by reference the facts set forth by this court in *People v. Orallo*, 2004 Guam 5 ¶¶ 2–6.

[3] In *Orallo I*, this court reversed the trial court's decision holding that Investigator Anthony W. Blas' Written Statement was not discoverable under 8 GCA § 70.10. The matter was remanded to the trial court for a sentencing hearing. Orallo was sentenced on January 3, 2005. This appeal followed.

II.

[4] This court has jurisdiction over the instant appeal pursuant to 48 U.S.C. § 1424-1(a)(2) (Westlaw through Pub. L. 109-76 (2005)) and 8 GCA § 130.15(a) (2005).

III.

[5] "Under the 'law of the case' doctrine, a court is generally precluded from reconsidering an issue that has already been decided by the same court, or a higher court in the identical case." *People v. Hualde*, 1999 Guam 3 ¶ 13. *See also Christianson v. Colt Indus. Operating Corp.*, 486

U.S. 800, 816-17 (1988) ("As most commonly defined, the doctrine [of the law of the case] posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.") (quoting *Arizona v. California*, 460 U.S. 605, 618 (1983)). "A court has discretion to depart from the law of the case where: 1) the first decision was clearly erroneous; 2) an intervening change in the law has occurred; 3) the evidence on remand is substantially different; 4) other changed circumstances exist; or 5) a manifest injustice would otherwise result." *Hualde*, 1999 Guam 3 ¶ 13 (citation omitted).

IV.

[6] This court held in *Orallo I* that only statements "relevant to the subject matter involved in the pending action" were discoverable under 8 GCA § 70.10(b)(i) (2005). *Orallo I*, 2004 Guam 5 ¶ 19 (quoting Guam R. Civ. P. 26(b)(1)). Applying that standard to the facts of the instant case, this court concluded that "Blas' Written Statement was not relevant to the subject matter of the Orallo Complaint and not discoverable under section 70.10(a)(1)." *Id.* ¶ 20. The matter was remanded for sentencing.

[7] Orallo now appeals from the trial court's judgment of conviction arguing that the People had an obligation to disclose Blas' Written Statement under Guam's discovery statutes. This court resolved that issue against Orallo in *Orallo I*. That holding became the law of the case and, absent a compelling reason to depart from that decision, this court will not reopen an already decided point. *See United States v. Rosales*, 606 F.2d 888, 889 (9th Cir. 1979).

[8] Orallo argues, after being prompted by this court to brief the applicability of the law of the case doctrine, that a manifest injustice will result in this case because he was not given adequate opportunity or notice to brief the meaning of "relevant" under section 70.10(b)(1). We disagree. The sole basis for the People's appeal in *Orallo I* was the trial court's grant of a new

trial for the alleged violation of section 70.10. Orallo had ample notice and opportunity in *Orallo I* to brief whether Blas' Written Statement was discoverable under section § 70.10. Orallo has failed to offer any legal authority to support his contention that a manifest injustice will result in this case if this court does not reconsider its decision.[1]

V.

[9] We resolved the issue in the instant appeal in *Orallo I* and Orallo has failed to demonstrate that any circumstances exist to warrant departing from that decision. Accordingly, the trial court's judgment of conviction is hereby **AFFIRMED**.

[1] Orallo's arguments are not only unpersuasive, but border on being frivolous. Orallo conceded during oral arguments that he has failed to raise any issues in the instant appeal that were not resolved by this court in *Orallo I*, yet has offered no legal authority or grounds for this court to depart from the law of the case other than the fact that he disagrees with this court's interpretation of 8 GCA § 70.10. We remind counsel that under Rule 21.1 of the Guam Rules of Appellate Procedure parties have a duty to advance arguments that "are warranted by existing law or by nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." Guam R. App. P. 21.1.

TORRES, J., concurring

[10] I concur with the majority's conclusion that Orallo has failed to demonstrate that a manifest injustice will result unless this court reconsiders its decision in *Orallo I*.

[11] Although Orallo has cited case law adopting a different interpretation of language similar to that found in section 70.10 than the standard this court announced in *Orallo I*, he has failed to establish that the decision in *Orallo I* was clearly erroneous or would result in manifest injustice.[1] *See Hualde*, 1999 Guam 3 ¶ 13 (stating that a court may depart from the law of the case where the first decision was clearly erroneous).

[12] Section 70.10 is based on standard 11-2.1 of the ABA, Project on Standards for Criminal Justice Discovery and Procedure Before Trial (Approved Draft 1970). *See People v. Superior Court (Laxamana)*, 2001 Guam 26 ¶¶ 35-38. This court, relying in part on Rule 26 of the Guam Rules of Civil Procedure,[2] limited the scope of section 70.10 to statements relevant to the subject matter involved in the pending action. *Orallo I*, 2004 Guam 5 ¶ 19. Orallo argues in the instant appeal that this court should adopt a different standard similar to the standard announced in *State v. Divito*, 955 P.2d 327 (Or. Ct. App. 1998).[3] In *Divito*, the Oregon Court of Appeals held that the analogous Oregon statute, which contains language similar to that found in section 70.10,

[1] In *Hualde*, this court provided that a clearly erroneous interpretation of law and manifest injustice are two separate grounds on which a court could depart from the law of the case. However, federal courts have combined the two grounds and held that a court may depart from the law of the case where "the previous disposition was clearly erroneous and would work a manifest injustice." *Leslie Salt Co. v. United States*, 55 F.3d 1388, 1393 (9th Cir. 1995).

[2] One crucial difference between the Rules of Civil Procedure and the Rules of Criminal Procedure not fully explored in *Orallo I* is that, under the Rules of Civil Procedure, parties have the general ability to depose potential witnesses. *See* Guam R. Civ. P. 27. In criminal cases, a party may only depose a person under special circumstances pursuant to 8 GCA § 70.50 (2005).

[3] Orallo also cites to *People v. Gallegos*, 644 P.2d 920 (Colo. 1982) for an example of a more liberal interpretation of a statute based on the ABA Standard. However, the court in *Gallegos* ultimately concluded that the Colorado discovery statute "does not require disclosure of every witness statement which relates to the events giving rise to the criminal charges, but only to those statements relevant to the issues in the case." *Id.* at 924-25.

requires that prosecutors disclose statements that are relevant to the testimony of witnesses whom the government intends to call. *Id.* at 330-331. *Cf. Howe v. State*, 589 P.2d 421, 424 n.7 (Alaska 1979) (summarizing potential problems with limiting discovery to witnesses the prosecution intends to call at trial identified by the ABA). The issue before this court, however, is not the scope of section 70.10 but whether Orallo has demonstrated that this court should depart from the law of the case. "Clear error requires more than a mere allegation that a prior panel rendered an unfavorable decision. Clear error leading to manifest injustice is judged under a 'stringent standard': 'A mere suspicion of error, no matter how well supported, does not warrant reopening an already decided point.'" *Toro Co. v. White Consol. Indus., Inc.*, 383 F.3d 1326, 1336 (Fed. Cir. 2004) (quoting *Gindes v. United States*, 740 F.2d 947, 950 (Fed. Cir. 1984)). Orallo has failed to make such a showing.[4]

[4] I agree that Orallo's arguments on appeal are unpersuasive but do not believe they are necessarily frivolous.