IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

KESNER RASAUO,
Defendant-Appellant.

OPINION

Cite as: 2011 Guam 14

Supreme Court Case No.: CRA10-008
Superior Court Case No.: CM1207-08

Appeal from the Superior Court of Guam
Argued and submitted on March 10, 2011
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, Associate Justice; and KATHERINE A. MARAMAN, Associate Justice.

CARBULLIDO, C.J.:

[1] Defendant-Appellant Kesner Rasauo, appeals from a final judgment from which he pleaded guilty to Driving Under the Influence. On appeal, Rasauo argues he was not promptly arraigned pursuant to 8 GCA § 60.10(a) and the trial court erred in sentencing him as a second offender pursuant to 16 GCA § 18105. In determining whether a defendant is promptly arraigned pursuant to section 60.10(a), we apply the statutory speedy trial time period articulated in 8 GCA § 80.60(a)(3). We hold that Rasauo was not required to show prejudice for failure to promptly arraign him because he challenged the delay pre-trial and sought interlocutory review of the denial. We further hold that unless good cause is shown a complaint shall be dismissed where a defendant is not promptly arraigned within 60 days of the filing of the complaint. Since Rasauo was not promptly arraigned within 60 days of the filing of the complaint and good cause was not shown for failing to promptly arraign him, we reverse the judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] This appeal stems from two separate arrests of Defendant-Appellant Kesner Rasauo for Driving Under the Influence ("DUI") in violation of 16 GCA §§ 18102(a) and (b). The first DUI arrest occurred on December 1, 2007. Appellee's Supplemental Excerpts of Record ("SER"), tab 1 at 1 (Compl., Sept. 4, 2008). After being booked and released Rasauo was given a Citation and Notice to Appear ("NTA") in court on December 10, 2008, more than one year from the date of the first arrest. Four months later, on April 13, 2008, the second DUI arrest occurred. Rasauo was booked and released and was given another NTA for a court appearance on April 1, 2009, this time within one year from the arrest. Record on Appeal ("RA") at 2 (Not. to Appear, Dec.

29, 2008). On September 4, 2008, Plaintiff-Appellee People of Guam ("People") filed a complaint in Criminal Case No. CM0742-08 for the first offense but did not file a summons for an earlier date. On December 29, 2008, a complaint for the second arrest was filed in Criminal Case No. CM1207-08, charging Rasauo with one charge of DUI (B.A.C.), and a second charge of DUI as a Misdemeanor. Rasauo appeared in court on April 1, 2009 for his initial appearance in CM1207-08; however, the hearing was continued until May 6, 2009[1]. Prior to being arraigned for the second DUI arrest, Rasauo was convicted after a jury trial for the first DUI offense and after appealing, the conviction was affirmed. *People v. Rasauo* ("*Rasauo I*"), 2011 Guam 1 ¶ 10.

[3] At the arraignment on May 6, 2009, Rasauo asserted his speedy trial rights and thereafter moved to dismiss the complaint in CM1207-08 for failure to promptly arraign him and for unnecessary delay in bringing him to trial. The motion was denied and Rasauo sought interlocutory review which was summarily denied. *See Rasauo v. People*, Supreme Court Case No. CRA09-008 (Pet. for Permission to Appeal, July 28, 2009). Subsequently, Rasauo pleaded guilty to DUI in the second arrest and was sentenced as a second offender pursuant to 16 GCA § 18105 while the appeal of the first conviction was pending. Judgment was entered and Rasauo timely filed this appeal.

II. JURISDICTION

[4] We have jurisdiction over an appeal of a criminal conviction pursuant to 48 U.S.C.A. § 1424-3(d) (Westlaw through Pub. L. 112-28 (2011)); and 7 GCA §§ 3107(a) and (b) (2005).

[1] A review of the record shows that the hearing was continued in order to secure a court interpreter for Rasauo.

III. STANDARD OF REVIEW

[5] We review for an abuse of discretion a decision and order denying a motion to dismiss a complaint alleging a violation of the guarantee to a prompt arraignment set forth in 8 GCA § 60.10(a). *Rasauo I*, 2011 Guam 1 ¶ 14.

IV. ANALYSIS

[6] We first address whether Rasauo was promptly arraigned under 8 GCA § 60.10(a). Rasauo was arrested on April 13, 2008, at which time he was issued a Citation and Notice to Appear on April 1, 2009, or 12 days short of one year later. Almost 8½ months later, a complaint was filed, but no request for a summons to appear before April 1, 2009 was made. Rasauo did not receive notice of the complaint until his appearance on April 1, 2009. On appeal, Rasauo contends that the trial court abused its discretion in denying his motion to dismiss because he was not promptly arraigned as required under 8 GCA § 60.10(a). Appellant's Br. at 4, 6 (Oct. 21, 2010). Because no statutory remedy exists when a defendant is not promptly arraigned under section 60.10 and in the absence of other remedies, Rasauo requests this court use its inherent authority to adopt a bright line rule. Appellant's Br. at 10. Specifically, Rasauo contends that without some procedure in place, the statute of limitations would be meaningless if cases could be filed undisclosed to the defendant and held in abeyance for months or years because the defendant was not summoned in a timely fashion. *Id.*

[7] The People counter that the denial of Rasauo's motion to dismiss was proper. Relying on *People v. Palomo*, 1998 Guam 12, the People argue that the complaint was filed in accordance with 8 GCA § 25.30 and within the one-year statute of limitations. Appellee's Br. at 8-9 (Nov. 22, 2010). In *Palomo*, we held that the People have two options in choosing how to prosecute a case—they can proceed pursuant to 8 GCA §§ 15.10 and 15.20 by filing a complaint with

affidavits to establish probable cause before a neutral magistrate so that summons will issue, or, alternatively, the People may proceed pursuant to section 25.30. *Palomo*, 1998 Guam 12 ¶ 14. In this case, the People filed a complaint, affidavit, and a notice to appear as required under section 25.30. No request for a summons was filed. The People explain that a summons is occasionally filed as a courtesy to the court where the NTA dates are excessively long from the time the complaint is filed and contend that the NTA date here was not excessively long. Appellee's Br. at 11.

[8] Title 8 GCA § 25.10 provides that when release of a suspect would pose no significant threat to public safety and minimal risk of flight, police are authorized to release the suspect upon issuance of a Citation and Notice to Appear in court at a later date. 8 GCA § 25.10 (2005). The NTA procedure does not articulate an express time limit within which the appearance date on the NTA must be set, or a time within which the People must file the notice and complaint to commence a formal prosecution. *See* 8 GCA §§ 25.20(a) and 45.20(a) (2005).

[9] Title 8 GCA § 80.60 provides a defendant with the substantive right to be brought to trial within 60 days of arraignment, or within 45 days of arraignment if the defendant is in custody at the time of arraignment. 8 GCA § 80.60(a) (2005). No comparable statute sets forth an express number of days within which a defendant who has been issued a notice to appear must be arraigned. Instead, 8 GCA § 60.10(a) provides that a "defendant shall be arraigned promptly . . . after the complaint is filed. . . ." 8 GCA § 60.10(a) (2005). In *People v. Stephen*, we recently stated that this prompt arraignment requirement is "a statutory expression of the speedy trial right" and that a delay involving "merely a matter of weeks" does not, in most circumstances, violate a defendant's right to a speedy trial. 2009 Guam 8 ¶ 32.

[10] In *Rasauo I*, this court recognized that no legal standard had been articulated "for determining the outer bounds of 'prompt arraignment.'" 2011 Guam 1 ¶ 52. As a result we said, in determining whether a defendant was promptly arraigned with reasonable speed, a court must consider the specific circumstances of the case. *Id.* In examining the facts in *Rasauo I*, this court stated:

> [I]t is difficult to imagine the justification for the delay of more than ninety days between the date the complaint was filed and the arraignment. The delay in arraignment, during which time the speedy trial timelines set forth by 8 GCA § 80.60 have not yet been triggered and that an indigent defendant is still awaiting assignment of public counsel, concerns us.

Id. ¶ 53.

[11] In deciding whether reversal of the conviction was the appropriate remedy, we held that because the defendant sought post-conviction relief for unnecessary delay of his arraignment date, he must not only show unjustified delay but must also show prejudice from the delay. *Id.* ¶¶ 55, 57. The defendant failed to show prejudice and as a result the conviction was upheld. *Id.* ¶ 58. The requirement of prejudice in *Rasauo I* does not govern this case because, unlike *Rasauo I*, in the instant case Rasauo sought pre-trial relief when he filed a motion to dismiss before the trial court and sought interlocutory review of the pre-trial order which was summarily denied. Under this circumstance, Rasauo was not required to show prejudice. *Id.* ¶¶ 55-57.

[12] "The public interest in a broad sense, as well as the constitutional guarantee, command prompt disposition of criminal charges." *Strunk v. United States*, 412 U.S. 434, 439, n.2 (1973), cited in *United States v. Clay*, 481 F.2d 133, 138 (7th Cir. 1973). This principle is directly embodied in our statutory framework, which provides:

> The welfare of the people of the territory of Guam requires that all proceedings in criminal cases shall be set for trial and heard and determined at the earliest possible time, and it shall be the duty of all courts and judicial officers and of all

> prosecuting attorneys to expedite such proceedings to the greatest degree that is consistent with the ends of justice.

8 GCA § 80.50(a) (2005).

[13] As we have previously stated, the statutory provision for arraignment does not provide an express time limit within which a defendant must be arraigned and therefore we must now determine what a reasonable time period is for which a defendant must be promptly arraigned under 8 GCA § 60.10(a). Absent an express statutory time period for prompt arraignment, we look to the statutory speedy trial time period in 8 GCA § 80.60(a)[2]. Section 80.60(a) provides a 60-day limit on the time between arraignment and trial, and a 45-day limit where the defendant is in custody. 8 GCA § 80.60 (2005). In applying similar time periods for prompt arraignment, it does not seem logical that a defendant be arraigned over 60 days after the complaint is filed presumably where almost all the evidence in a DUI case is already available, and the speedy trial time period is only 60 days. We infer from the legislature's establishment of a 45-day or 60-day limit under 8 GCA § 80.60 for the time between arraignment and trial, that the statutory scheme surely contemplates no greater a number of days to govern the outer limit on the time in which the People are expected to achieve the less complex task of conducting an arraignment after a complaint is filed. Therefore, in determining whether a defendant is promptly arraigned pursuant

[2] We note that many jurisdictions establish by statute or court rule a fixed time for arraignment. *See,* Ariz. R. Crim. P. 14.1 (Defendant not in custody shall be arraigned within 30 days after the filing of an indictment, information or complaint); Pa. R. Crim. P. 571(A) ("[A]rraignment shall take place no later than 10 days after the information is filed"); Miss. R. Unif. Cir. & Cty. 8.01 (Arraignment shall be held within 30 days after defendant is served with indictment); Wash. Super. Ct. Crim. R. 4.1(a)(2) (A defendant shall be arraigned not later than 14 days after that appearance which next follows the filing of the complaint .if not in custody); NM R. Crim. P. Metro. Ct. 7-506 (A defendant shall be arraigned within 30 days after the complaint is filed). It is difficult, however, to find applicable case precedent from other jurisdictions in determining a reasonable period for prompt arraignment and we decline to analogize such cases here.

to section 60.10(a), we will apply the statutory speedy trial time period delineated in 8 GCA § 80.60(a)(3).

[14] We hold that unless good cause is shown, a complaint shall be dismissed where a defendant is not promptly arraigned within 60 days of the filing of the complaint. We have previously stated, while discussing the meaning of the word "prompt" in this context, that "in determining whether arraignment has occurred with reasonable speed, a court must consider the specific circumstances of the case." *Rasauo I*, 2011 Guam 1 ¶ 52. Although herein we adopt a structured procedure for determining whether or not 8 GCA § 60.10(a) has been complied with, we emphasize that compliance with this new standard continues to require a case by case analysis of whether or not the "specific circumstances" of any given case show good cause for delay beyond the 60 day period normally required to comply with the law. *Id.* Thus, our holding is designed to provide a baseline standard, and not to bind the hands of the trial court in cases where deviation from this baseline is judged to be appropriate.

[15] The complaint in this case was filed on December 29, 2008, and Rasauo was arraigned on May 6, 2009. The delay from the time the complaint was filed and the date of arraignment was 128 days, and there is nothing in the record to justify a delay of more than 60 days. Moreover, no good cause was shown for the delay and because Rasauo sought pre-trial relief when he filed a motion to dismiss before the trial court and sought interlocutory review of the pre-trial order which was summarily denied, he was not required to show prejudice from the delay. *Nicholson v. Super. Ct.*, 2007 Guam 9 ¶ 24[3]. Therefore, in applying the 60 day time period delineated

[3] In this case Rasauo sought an interlocutory appeal rather than a petition for a writ of mandate (as was sought in *Nicholson*). *See Nicholson*, 2007 Guam 9 ¶ 5. However, the key in deciding whether or not a defendant will have to demonstrate prejudice is not the procedure by which the defendant seeks appellate review, but whether

above, we find that Rasauo was not promptly arraigned pursuant to 8 GCA § 60.10(a) and the trial court abused its discretion in denying the motion to dismiss for prompt arraignment. We reverse the judgment and remand the case to the trial court to vacate its decision and order dated July 10, 2009 and dismiss the charges in Criminal Case No. CM1207-08, but we will not exercise our discretion to decide, based on the record before us, whether the dismissal should be with or without prejudice. Furthermore, because the judgment is reversed and the charges dismissed, we need not address Rasauo's argument of unnecessary delay under 8 GCA § 80.70(b) or whether the trial court abused its discretion in sentencing Rasauo as a second offender pursuant to 16 GCA § 18105.

V. CONCLUSION

[16] We find that in determining whether a defendant is promptly arraigned pursuant to section 8 GCA § 60.10(a), we will apply the statutory speedy trial time period delineated in 8 GCA § 80.60(a)(3). We hold that unless good cause is shown, a complaint shall be dismissed where a defendant is not promptly arraigned within 60 days of the filing of the complaint. We conclude that the 128 delay from the time the complaint was filed and the arraignment was not justified and no good cause was shown. Moreover, prejudice need not be shown for the delay in arraignment where the defendant challenged the delay pre-trial and sought interlocutory review. Thus, Rasauo was not promptly arraigned. Accordingly, we **REVERSE** the Judgment and **REMAND** the case to the trial court to vacate its decision and order dated July 10, 2009 and dismiss the charges in Criminal Case No. CM1207-08. The issue of whether or not the case

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or not the defendant has sought pre-trial relief. *See Id.* at ¶ 24. Here, as in *Nicholson*, a motion to dismiss was filed at the trial court, which was subsequently denied, and later brought to this court. *See Id.* ¶ 24; *see also* ER at 4-8 (Dec. & Order re: Mot. to Dismiss, July 10, 2009).

should be dismissed with or without prejudice should be decided in the first instance by the trial court.

Original Signed By: **Robert J. Torres**
ROBERT J. TORRES
Associate Justice

Original Signed By: **Katherine A. Maraman**
KATHERINE A. MARAMAN
Associate Justice

Original Signed By: **F. Philip Carbullido**
F. PHILIP CARBULLIDO
Chief Justice