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SUPREME COURT  
OF GUAM

**IN THE SUPREME COURT OF GUAM**

**THE PEOPLE OF GUAM,**  
Plaintiff-Appellee,

v.

**BERNARD DIOMAMBO AROMIN,**  
Defendant-Appellant.

Supreme Court Case No. CRA13-008  
Superior Court Case No. CM0278-12

**OPINION**

**Cite as: 2014 Guam 3**

Appeal from the Superior Court of Guam  
Argued and submitted on October 21, 2013  
Hagåtña, Guam

Appearing for Defendant-Appellant:

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice<sup>1</sup>; ROBERT J. TORRES, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

**TORRES, J.:**

[1] Defendant-Appellant Bernard Diomambo Aromin was charged with driving under the influence of alcohol in Superior Court of Guam Case No. CM0467-11. He was arraigned more than 60 days after the filing of the complaint. The case was dismissed without prejudice because Aromin was not promptly arraigned pursuant to 8 GCA § 60.10(a) and our opinion in *People v. Rasauo*, 2011 Guam 14 (“*Rasauo II*”). Another complaint was filed in Superior Court of Guam Case No. CM0278-12, again charging Aromin with misdemeanor offenses for driving under the influence of alcohol based on the same events. Aromin moved to dismiss the later complaint, arguing that the initial complaint should have been dismissed with prejudice. The trial court denied his motion to dismiss. We granted Aromin’s petition for interlocutory appeal of the decision and order denying his motion to dismiss.

[2] Aromin argues on appeal that the prompt arraignment statute, 8 GCA § 60.10, is a statutory expression of the speedy trial statute, 8 GCA § 80.60, and the sole remedy for a violation of his prompt arraignment right should be automatic dismissal with prejudice. Aromin argues in the alternative that, if dismissal with prejudice is not automatic, then the trial court should be required to follow the balancing factors provided in the federal Speedy Trial Act, 18 U.S.C.A. § 3162(a)(2), instead of a prejudice analysis or the test enunciated in *Barker v. Wingo*, 407 U.S. 514 (1972). Plaintiff-Appellee The People of Guam (“People”) assert that a violation of a defendant’s prompt arraignment rights is not equivalent to a violation of the same

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<sup>1</sup> The signatures in this opinion reflect the titles of the Justices at the time this matter was considered and determined.

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defendant's speedy trial rights and automatic dismissal with prejudice is not warranted when a defendant is not promptly arraigned. The People submit that the characterization of a dismissal should hinge upon the procedural facts of each case and the trial courts should conduct a particularized analysis similar to the tests employed by the trial judges in addressing Aromin's separate motions to dismiss.

[3] We hold that a violation of a defendant's prompt arraignment rights does not require automatic dismissal with prejudice, and when exercising its discretion to dismiss a case with or without prejudice for such a violation, the trial court should follow the federal Speedy Trial Act factors.

#### I. FACTUAL AND PROCEDURAL BACKGROUND

[4] A complaint was filed against Aromin for driving while under the influence in Superior Court Case No. CM0467-11. He was arraigned more than 60 days after the complaint was filed.

[5] Aromin filed a motion to dismiss the complaint based on this court's holding in *Rasauo II*, 2011 Guam 14. The motion was granted, and the case was dismissed without prejudice.

[6] Almost a month later, the People re-filed the charges in Superior Court Case No. CM0278-12. Aromin sought to have this latter complaint dismissed, contending that the earlier complaint against him should have been dismissed with prejudice. The trial court denied the motion to dismiss the latter complaint, deciding that the trial court properly dismissed the initial complaint without prejudice.

[7] Aromin then petitioned for interlocutory review with this court. The petition was granted because the interlocutory appeal would involve questions of law and the issues on appeal would satisfy at least one of the criteria of 7 GCA § 3108(b).

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## II. JURISDICTION

[8] This court has jurisdiction over an interlocutory appeal from the trial court's denial of a motion to dismiss under 48 U.S.C.A. § 1424-1(a)(2) (Westlaw current through Pub. L. 113-74 (2014)) and 7 GCA § 3108(b) (2005).

## III. STANDARD OF REVIEW

[9] A decision and order dismissing a complaint for violation of a defendant's prompt arraignment rights is reviewed for an abuse of discretion. *People v. Julian*, 2012 Guam 26 ¶ 8 (citing *Rasauo II*, 2011 Guam 14 ¶ 5).

[10] Purely legal issues are reviewed *de novo*. *People v. Rios*, 2008 Guam 22 ¶ 8 ("Generally, a reviewing court considers a trial court's ultimate ruling on a motion to dismiss charges under an abuse-of-discretion standard, but where the issues present purely legal questions, the standard of review is *de novo*." (quoting *People v. King*, 852 N.E.2d 559, 560 (Ill. App. Ct. 2006))).

[11] Issues of statutory interpretation are subject to *de novo* review. *Ada v. Guam Tel. Auth.*, 1999 Guam 10 ¶ 10. "[I]f . . . the court dismisses the indictment based on its interpretation of the governing statutes, that is a legal determination we review *de novo*." *Rios*, 2008 Guam 22 ¶ 8 (quoting *United States v. La Cock*, 366 F.3d 883, 888 (10th Cir. 2004)).

## IV. DISCUSSION

[12] We must decide whether trial courts have the discretion to dismiss a complaint with or without prejudice for violation of a defendant's prompt arraignment rights; and if they have this discretion, what factors should they consider.<sup>2</sup>

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<sup>2</sup> In Aromin's Statement of Issues, he raised the issue that the trial court erred in denying his motion to dismiss on the ground that he failed to file a motion to reconsider. Aromin, however, voluntarily withdrew the issue from consideration. Am. Appellant's Br. at 1-2 n.1 (Sept. 3, 2013). Therefore, we will not address it.

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**A. Discretion to Dismiss a Complaint With or Without Prejudice for Violation of a Defendant's Prompt Arraignment Rights**

[13] Aromin argues that “[d]ismissal with prejudice should be automatic in order to create a meaningful remedy and deter future violations.” Am. Appellant’s Br. at 5 (Sept. 3, 2013). Aromin contends that because the prompt arraignment statute is a statutory expression of the speedy trial right, “the remedy applied to a statutory speedy trial violation should be the same as applied to a violation of the prompt arraignment right expressed in 8 GCA § 60.10.” *Id.* at 9. The remedy to which Aromin refers is a dismissal *with prejudice*. *See id.* at 7-17.

[14] The People maintain that the “characterization of a dismissal should hinge upon the procedural facts of the case at hand, rather than a per se rule . . . .” Appellee’s Br. at 8 (Sept. 13, 2013). More specifically, the People argue that the Supreme Court in *Rasauo II* “conferred upon the trial courts similarly broad discretion in determining from the procedural facts of each case the issue of how a dismissal under the *Rasauo II* formula should be characterized.” *Id.* (citing *Rasauo II*, 2011 Guam 14 ¶ 16). We agree. This court has never ruled that a speedy trial violation requires an automatic dismissal with prejudice, and we refuse to adopt such a remedy for the failure to promptly arraign a defendant.

[15] The prompt arraignment statute, 8 GCA § 60.10, provides:

**§ 60.10. When, How Arraignment Conducted.**

(a) The defendant shall be arraigned promptly after the indictment or information is filed or after the complaint is filed where prosecution by complaint is required by § 1.15.

(b) Arraignment shall be conducted in open court and shall consist of reading the indictment, information or complaint to the defendant or stating to him the substance of the charge and calling on him to plead thereto. The defendant shall be given a copy of the indictment, information or complaint before he is called upon to plead.

8 GCA § 60.10 (2005).

[16] The statutory text is silent on whether the dismissal should be with or without prejudice. Although the statute is silent, this court in *Rasauo II* held that “whether or not the case should be dismissed with or without prejudice should be decided in the first instance by the trial court.” 2011 Guam 14 ¶ 16. Further, as this court also held in *Rasauo II*, “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.” *Id.* ¶ 14 (emphasis added). Accordingly, because section 60.10 allows the trial court to withhold dismissal altogether upon a showing of “good cause,” it seems only logical that it would also allow the intermediate remedy of dismissal without prejudice.

[17] Further, the argument that section 60.10 mandates automatic dismissal with prejudice for any prompt arraignment violation, no matter how minor, is not sound. If section 60.10 is interpreted to require automatic dismissal with prejudice, the trial court would have to dismiss any case that is not brought to trial within the statute’s deadlines, and the trial court would have no discretion to consider the facts and circumstances of the case before it. For instance, a lack of discretion would mean that the trial court would not be able to examine the seriousness of the offenses or the reasons for the violation of a defendant’s prompt arraignment right. These are important factors that a trial court should be able to consider before imposing a sanction as harsh as automatic dismissal with prejudice for any prompt arraignment violation. We therefore reject Aromin’s argument that a violation of a defendant’s prompt arraignment rights necessitates automatic dismissal with prejudice, and we hold that trial courts have the discretion to decide whether a dismissal for such a violation should be made with or without prejudice.

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**B. Factors in Deciding Whether Dismissal Should be With or Without Prejudice**

[18] We must now decide what factors must be considered by trial courts when exercising their discretion to dismiss a case for violation of a defendant's prompt arraignment rights. Aromin recommends adopting the federal Speedy Trial Act factors because they provide "a better measure to evaluate whether a dismissal should be with or without prejudice in the prompt arraignment context." Am. Appellant's Br. at 21.

[19] Section 3162(a)(2) of the federal Speedy Trial Act provides:

If a defendant is not brought to trial within the time limit required by section 3161(c) as extended by section 3161(h), the information or indictment *shall be dismissed* on motion of the defendant. . . . *In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice.*

18 U.S.C.A. § 3162(a)(2) (Westlaw current through Pub. L. 113-74) (emphasis added); *see generally United States v. Taylor*, 487 U.S. 326 (1988) (applying the federal Speedy Trial Act factors).

[20] The federal act is similar to the Guam speedy trial statute, 8 GCA § 80.60.<sup>3</sup> Although the federal act expressly gives the trial court the discretion to decide whether to dismiss with or

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<sup>3</sup> Section 80.60 provides:

(a) Except as otherwise provided in Subsection (b), the court shall dismiss a criminal action if:

(1) An information is not filed or an indictment returned within the time prescribed by §§ 45.45, 45.50 and 45.80;

(2) The trial of a defendant, who is in custody at the time of his arraignment, has not commenced within forty-five (45) days after his arraignment; or

(3) The trial of a defendant, who is not in custody at the time of his arraignment, has not commenced within sixty (60) days after his arraignment.

(b) A criminal action shall not be dismissed pursuant to Subsection (a) if:

without prejudice, it, like the Guam speedy trial act, does not specify whether dismissal should be with or without prejudice, nor does it contain a default presumption one way or the other. Compare 8 GCA § 80.60, with 18 U.S.C.A. § 3162(a)(2). We have looked to the statutory speedy trial time period delineated in 8 GCA § 80.60(a)(3) in determining whether a defendant is promptly arraigned pursuant to section 8 GCA § 60.10(a), and it is reasonable for a trial court to apply the federal Speedy Trial Act's factors when deciding whether to dismiss a case with or without prejudice for a violation of a defendant's prompt arraignment rights.

[21] Therefore, we adopt the federal Speedy Trial Act factors and require the trial courts to consider these factors when deciding whether to dismiss a case with or without prejudice: (1) the seriousness of the offense; (2) the facts and circumstances of the case which led to the dismissal; and (3) the impact of a reprosecution on the administration of justice. The second factor includes, but is not limited to, the facts and circumstances surrounding the length of delay, government conduct, and actual prejudice<sup>4</sup> suffered by the defendant.

### C. Application of the Federal Speedy Trial Act Factors

[22] In the decision and order denying Aromin's motion to dismiss the second complaint, the trial court carefully examined the standard for dismissal with prejudice. In denying Aromin's

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(1) The action is set on a date beyond the prescribed period upon motion of the defendant or with his consent, express or implied, and he is brought to trial on the date so set or within ten (10) days thereafter;

(2) The defendant failed to appear for trial and he is brought to trial within thirty (30) days following his next appearance in the trial court; or

(3) Good cause is shown for the failure to commence the trial within the prescribed period.

8 GCA § 80.60 (2005).

<sup>4</sup> Although a showing of prejudice has been classified as the fourth factor under the federal Speedy Trial Act, we believe it should be considered as part of the second factor. See *United States v. Lewis*, 518 F.3d 1171, 1176 (9th Cir. 2008) ("Congress intended prejudice to the defendant to be a fourth factor weighed by the district court[.]") (quoting *Taylor*, 487 U.S. at 333-34)).



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motion to dismiss, the trial court applied factors similar to the federal Speedy Trial Act factors, such as the seriousness of the offense, the length of the delay, the interests of the victim and public, the prejudice to the defendant, any bad faith by the People, and the impact of a reprosecution on the administration of justice. *See* Record on Appeal, tab 17 at 2-4 (Dec. & Order, Mar. 1, 2013).

[23] The trial court applied the seriousness of the offense factor in recognizing that the more serious the offense, the more weight should be given to dismissal without prejudice. *Id.* at 2 (citing *United States v. Clymer*, 25 F.3d 824, 831 (9th Cir. 1994)). The trial court also found that this factor favored dismissal with prejudice because the crimes alleged against Aromin “are not felony crimes, less serious than felonious acts[.]” *Id.* at 4.

[24] Further, in looking at the facts and circumstances of the case which led to the dismissal, the trial court did “not find any bad faith by the Government or the Court in causing the delay.” *Id.* The court also found that Aromin “presented no support of any factor to show that actual prejudice occurred. There are no suggestions that witnesses are now unavailable or that exculpatory evidence is now missing or deteriorated.” *Id.* at 3. The court recognized that “[a]s Defendant was not languishing in jail awaiting the initiation of this case, the liberty interests discussed in *Taylor* do not favor dismissal with prejudice.” *Id.* at 4.

[25] With respect to the impact of prosecution on the administration of justice, the court stated that “[d]ismissal without prejudice is not a toothless sanction’ because ‘it forces the Government to obtain a new indictment if it decides to reprosecute, and it exposes the prosecution to dismissal on statute of limitations grounds.’” *Id.* at 2 (quoting *Taylor*, 487 U.S. at 342). The trial court found that this factor does not favor dismissal with prejudice. *Id.*

[26] After weighing the above factors, the trial court denied the motion to dismiss and held the previous dismissal of the original complaint without prejudice was made in compliance with the proper rules. *Id.* at 4. In reaching this decision, the trial court did not abuse its discretion.

[27] Therefore, based upon the above, the trial court correctly applied the federal Speedy Trial Act factors in deciding that dismissal without prejudice was the appropriate remedy for the violation of Aromin's prompt arraignment rights.

### V. CONCLUSION

[28] We find that trial courts have the discretion to dismiss a complaint with or without prejudice for a violation of a defendant's prompt arraignment rights and that the trial court correctly applied federal Speedy Trial Act factors in determining that dismissal without prejudice was the appropriate remedy for violation of Aromin's prompt arraignment rights.

[29] Therefore, the trial court's denial of Aromin's motion to dismiss is **AFFIRMED**.

Original Signed By: **Robert J. Torres**

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ROBERT J. TORRES  
Associate Justice

Original Signed By: **Katherine A. Maraman**

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KATHERINE A. MARAMAN  
Associate Justice

Original Signed By: **F. Philip Carbullido**

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F. PHILIP CARBULLIDO  
Chief Justice