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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,
Plaintiff-Appellant,

v.

JOCELYN REBECCA JESUS LEON GUERRERO,
Defendant-Appellee.

Supreme Court Case No.: CRA13-013
Superior Court Case No.: CM0395-11

OPINION

Cite as: 2014 Guam 10

Appeal from the Superior Court of Guam
Argued and submitted November 7, 2013
Hagåtña, Guam

Appearing for Plaintiff-Appellant:

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

TORRES, J.:

[1] The People of Guam (the “People”) appeal from the trial court’s dismissal of a criminal complaint against Joycelyn Rebecca Jesus Leon Guerrero. Leon Guerrero was charged with one count of Driving Under the Influence of Alcohol (As a Misdemeanor). However, due to her initial failure to appear combined with the failure to execute a bench warrant for her arrest, Leon Guerrero was not arraigned until over five hundred days after the complaint against her was filed. The trial court found no good cause to excuse this delay and dismissed the complaint without prejudice for failure to promptly arraign, as required by 8 GCA § 60.10. The People filed a timely notice of appeal.

[2] We hold that the trial court did not abuse its discretion in dismissing the complaint against Leon Guerrero.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] On April 16, 2010, Defendant-Appellee Jocelyn Rebecca Jesus Leon Guerrero was arrested for allegedly driving drunk. The next day, she was released and given a Citation and Notice to Appear (“NTA”) for arraignment on April 6, 2011, almost one year from the date of arrest. The Citation and NTA also contained a “Promise to Appear,” which she signed,

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¹ The signatures in this opinion reflect the titles of the justices at the time the matter was considered and determined.

indicating the repercussions for willfully failing to appear for arraignment.² RA, tab 2 (Citation & Notice to Appear, Mar. 30, 2011).

[4] On March 30, 2011, the People filed a complaint charging Leon Guerrero with a single count of Driving Under the Influence of Alcohol (As a Misdemeanor); the complaint was filed contemporaneously with a copy of the Citation and NTA. Leon Guerrero failed to appear at her arraignment on April 6, 2011. The trial court issued a bench warrant for her arrest on April 11, 2011.

[5] Although the bench warrant contained Leon Guerrero's address, and the Citation and NTA contained her address and contact information, no attempts were made to contact her or serve the warrant. On October 24, 2012, over five hundred days after the bench warrant was issued, Leon Guerrero voluntarily came to the court to obtain a court clearance for a new job; at that time, the outstanding bench warrant was discovered and Leon Guerrero was taken into custody. She was finally arraigned on October 31, 2012.

[6] Leon Guerrero filed a motion to dismiss her case because she was not promptly arraigned within 60 days of the filing of the complaint, arguing that no good cause was shown for the delay exceeding 60 days. The People filed an opposition, asserting that good cause existed to justify the delay given Leon Guerrero's failure to make an initial appearance pursuant to the NTA. By reply, Leon Guerrero reiterated that the People provided no justification for the failure to serve the bench warrant, that the record is devoid of any evidence reflecting an attempt to serve the

² The "Promise to Appear" provides:

Without admitting guilt, I promise to appear at the Superior Court . . . at the time and on the date shown above, or upon summons. Further, I understand that *if I should willfully fail to appear as promised, I may be charged for a misdemeanor or Felony* in accordance with Title 8 Guam Code Annotated, section 25.50.

warrant or otherwise contact her, and that delays caused by the court are attributable to the People based on recent Guam Supreme Court jurisprudence.

[7] The trial court issued a decision and order granting Leon Guerrero's motion to dismiss. The People filed a timely notice of appeal.

II. JURISDICTION

[8] This court has jurisdiction over this appeal pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 113-92 (2014)); 7 GCA §§ 3107(a) and 3108(a) (2005); and 8 GCA § 130.20(a)(5) (2005) ("An appeal may be taken by the government from . . . [a]n order or judgment dismissing or otherwise terminating the action . . .").

III. STANDARD OF REVIEW

[9] We review a trial court's decision on a motion to dismiss for violation of prompt arraignment for an abuse of discretion. *People v. Julian*, 2012 Guam 26 ¶ 8 (citing *People v. Rasauo* ("*Rasauo IP*"), 2011 Guam 14 ¶ 5). "A trial court abuses its discretion when its decision is based on an erroneous conclusion of law or where the record contains no evidence on which the judge could have rationally based the decision." *People v. Singeo*, 2012 Guam 27 ¶ 8 (quoting *Town House Dep't Stores, Inc. v. Ahn*, 2003 Guam 6 ¶ 27). When reviewing for an abuse of discretion, we will not reverse a trial court unless "we are left with a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon weighing of the relevant factors." *Id.* (citation omitted).

IV. ANALYSIS

[10] When the People choose to prosecute a defendant, Guam's Criminal Procedure Code requires that "[t]he defendant shall be arraigned promptly after the indictment or information is filed or after the complaint is filed . . ." 8 GCA § 60.10(a) (2005). Interpreting this statute, we

have stated that section 60.10(a) constitutes a “statutory expression of the speedy trial right.” *Rasauo II*, 2011 Guam 14 ¶ 9 (quoting *People v. Stephen*, 2009 Guam 8 ¶ 32). In *Rasauo II*, we held 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.” *Id.* ¶ 14. We stressed that the good cause inquiry “require[s] 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,” and that for each case, “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.” *Id.* (citation omitted).

[11] Subsequently, in *People v. Julian*, we chose to attribute the court’s delay in prompt arraignment to the People. 2012 Guam 26 ¶ 22 (citing *People v. Flores*, 2009 Guam 22 ¶ 32); *see also Flores*, 2009 Guam 22 ¶ 32 (in the speedy trial context, “[d]elay attributable to the fault of the prosecution or improper court administration . . . does not constitute good cause.” (emphasis added)). When attributing the court’s delay to the People, we were satisfied that the decision in *Rasauo II* did not “interfere[] with the People’s prosecutorial function.” *Julian*, 2012 Guam 26 ¶ 34. Specifically, we explained that under Guam law the People may have someone other than a marshal serve the summons. *Id.* (“[A] ‘summons may be served by any person authorized to serve a summons in a civil action.’” (quoting 8 GCA § 15.70(c) (2005))). Moreover, we explained that when the People choose to prosecute via complaint, Guam law imposes a duty on the prosecution “to expedite such proceedings to the greatest degree that is consistent with the ends of justice.” *Id.* (quoting 8 GCA § 80.50(a) (2005)).

[12] Here, the delay between the People’s filing of the complaint and Leon Guerrero’s arraignment was over five hundred days; thus, the only question is whether there was good cause

to excuse the delay. The People argue that failure to appear at an NTA hearing should, per se, be fatal to a later motion to dismiss for failure to promptly arraign. *See* Appellant's Br. at 9-11 (June 19, 2013). In support of this argument, the People note that 8 GCA § 80.60(b)(2) exempts from speedy trial scrutiny those cases where the defendant fails to appear for trial and such an exception should apply in the prompt arraignment context, because our prompt arraignment jurisprudence has been based largely on Guam's speedy trial statute. *Id.* at 10-11. For the reasons set forth below, we do not adopt this per se rule.

[13] While our prompt arraignment jurisprudence has been crafted with reference to Guam's speedy trial statute, *Rasauo II*, 2011 Guam 14 ¶ 13, we have never stated or implied that "the entirety of the language" of 8 GCA § 80.60 would be grafted onto 8 GCA § 60.10. Instead, we have been clear that the speedy trial statute and its interpreting case law "is not controlling" in our prompt arraignment cases, but "does provide guidance." *Julian*, 2012 Guam 26 ¶ 21. Here, we are urged to read into 8 GCA § 60.10 a specific statutory exemption that appears in 8 GCA § 80.60(b)(2) but does not appear in the prompt arraignment statute. Because of differences between failure to appear at trial and failure to appear at an NTA hearing, we decline to do so. When a defendant fails to appear at trial, he or she knows the charges in the complaint and has had an opportunity to retain, consult with, or be appointed counsel. On the other hand, an arrested party who is given an NTA does not know what charges will be brought (as the complaint has not been filed), will rarely have counsel, and in many cases (including this one), will have nearly a year to wait between receiving the NTA and the actual hearing date. Because of these differences, there is good reason to include such an exception in the speedy trial statute while declining to include the same exception in the prompt arraignment statute. We will not

read the speedy trial exception of 8 GCA § 80.60(b)(2) into the prompt arraignment statute when the legislature has not chosen to include such an exception in 8 GCA § 60.10.

[14] We do not condone Leon Guerrero's failure to appear, nor are we interested in rewarding evasiveness. Title 8 GCA § 25.50(b) makes it a crime to willfully fail to appear for an NTA hearing, and our holding today does not give free reign to ignore NTAs and willfully fail to appear. Furthermore, were this a different case—for example, if the delay had been 61 days or there had been any attempt to contact Leon Guerrero—we would likely find good cause for the delay. All we hold on the issue today is that failure to appear at an NTA hearing is not per se fatal to a later motion to dismiss for failure to promptly arraign, although it is certainly a factor for the trial court to consider in its analysis of good cause. *See Rasauo II*, 2011 Guam 14 ¶ 14.

[15] Because Leon Guerrero's failure to appear is not alone sufficient to either exempt her case from prompt arraignment analysis or constitute good cause, we must examine the circumstances surrounding the delay in arraignment in this case. The bulk of the delay—from April 11, 2011, when the bench warrant was issued, to October 24, 2012, when Leon Guerrero was arrested—resulted from the failure to serve the bench warrant on Leon Guerrero. There was no evidence presented of any attempt to serve the bench warrant on Leon Guerrero or to otherwise reach her. Though the court's marshals typically serve such warrants, we have held that delay attributable to the court is held against the prosecution and cannot constitute good cause. *Julian*, 2012 Guam 26 ¶ 22.

[16] The People argue that *Julian* should not apply in this case because *Julian* involved issuance of a summons and this case involves service of a bench warrant. *See* Appellant's Br. at 7-8. We are not persuaded that there is a difference between the two for purposes of applying the rule in *Julian*. Nothing in our holding in *Julian* limited the rule to service of summonses;

indeed, the reasons for attributing court delay to the People are also present in the bench warrant context. Title 8 GCA § 15.70(b) requires execution of a bench warrant by a “peace officer,” and 8 GCA § 5.55(e) defines “peace officer” as including “[t]he Attorney General and those investigators employed by the Attorney General’s Office whom the Attorney General specifically designates.” 8 GCA §§ 15.70(b), 5.55(e) (2005). Thus, as with service of a summons, the People had an option to execute the bench warrant without the court marshals’ help. Additionally, 8 GCA § 80.50(a) applies with equal strength to the execution of bench warrants as it does to the service of summonses—when the People choose to prosecute via complaint, Guam law requires the People “to expedite such proceedings to the greatest degree that is consistent with the ends of justice.” 8 GCA § 80.50(a). For these reasons, we see no reason not to apply the rule in *Julian* to delays in serving bench warrants.

[17] Here, the People had options available to speed Leon Guerrero’s arraignment. The People could have: (1) contacted the marshals to determine the status of the bench warrant, or (2) had a “peace officer” in the Office of the Attorney General (“AG’s Office”) execute the bench warrant pursuant to 8 GCA §§ 5.55(e) and 15.70(b). While there is no duty on the AG’s Office to serve bench warrants through its own employees, the legal authority to do so further bolsters the reasoning that holding the failure to serve a bench warrant against the People does not “interfere[] with the People’s prosecutorial function.” *Julian*, 2012 Guam 26 ¶ 34. Additionally, the failure of the AG’s Office to make any effort to expedite the process, while not dispositive in every case, is a relevant factor for a trial court to consider when conducting a case- and fact-specific good cause analysis.

[18] Today we hold that failure to appear at an NTA hearing is not per se fatal to a later motion to dismiss and that delay in arraignment due to failure to make any efforts to serve a

bench warrant may be attributed to the People. Accordingly, the trial court did not abuse its discretion in finding, on the facts of this case, that there was no good cause for over five hundred days of delay in arraignment.³ We affirm the trial court’s dismissal of the complaint against Leon Guerrero.

V. CONCLUSION

[19] We hold that the trial court did not abuse its discretion in dismissing the complaint for failure to promptly arraign. The trial court’s decision and order is **AFFIRMED**.

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

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

ROBERT J. TORRES
Associate Justice

KATHERINE A. MARAMAN
Associate Justice

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

F. PHILIP CARBULLIDO
Chief Justice

I do hereby certify that the foregoing is a full true and correct copy of the original on file in the office of the clerk of the Supreme Court of Guam.

MAY 05 2014

By: **Charlene T. Santos**
Deputy Clerk
Supreme Court of Guam

³ Because we hold that the trial court did not abuse its discretion in finding no good cause for the delay, we need not and do not address Leon Guerrero’s alternative argument that the magistrate judge was required to issue a summons and that the failure to do so precludes a finding of good cause. See Appellee’s Br. at 14-17 (July 19, 2013).