



Filed

Supreme Court of Guam, Clerk of Court

IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

ALVIN GERARD SAN NICOLAS,
Defendant-Appellant.

Supreme Court Case No.: CRA15-008
Superior Court Case No.: CF0490-10

OPINION

Cite as: 2016 Guam 21

Appeal from the Superior Court of Guam
Argued and submitted on December 9, 2015
Hagåtña, Guam

Appearing for Defendant-Appellant:
F. Randall Cunliffe, *Esq.*
Cunliffe & Cook
210 Archbishop Flores St., Ste. 200
Hagåtña, GU 96910

Appearing for Plaintiff-Appellee:
Matthew S. Heibel, *Esq.*
Assistant Attorney General
Office of the Attorney General
Prosecution Division
590 S Marine Corps Dr., Ste. 706
Tamuning, GU 96913

E-Received

7/15/2016 9:47:37 AM

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

MARAMAN, J.:

[1] Defendant-Appellant Alvin Gerard San Nicolas appeals from a final judgment convicting him of two counts of First Degree Criminal Sexual Conduct (“CSC”) (as a First Degree Felony), eight counts of Third Degree CSC (as a Second Degree Felony) as a lesser included offense of First Degree CSC, and one count of Second Degree CSC (as a First Degree Felony). Among other claims, the primary issue presented on appeal is one of jurisdiction. San Nicolas argues that the trial court lacked jurisdiction over proceedings resulting from a superseding¹ indictment (“Superseding Indictment”) when this court had not yet issued a mandate in a previous appeal.

[2] For the reasons set forth below, we hold that the trial court did not have jurisdiction to accept or act on the Superseding Indictment after a notice of appeal was filed but before the mandate issued. As such, we reverse and vacate the convictions, and remand the matter to the trial court for further proceedings not inconsistent with this opinion. Our holding on the issue of the trial court’s jurisdiction precludes our need to reach the remaining issues raised on appeal.²

¹ Note: The trial court document is entitled “Superceding Indictment.” See RA, tab 119 at 1 (Superceding Indictment, Nov. 12, 2013). Dictionaries such as Black’s consider this spelling as error and use the spelling “superseding indictment.” See *Superseding Indictment*, Black’s Law Dictionary (10th ed. 2014). Therefore, the spelling as found in the dictionaries will be used throughout this opinion.

² San Nicolas also contends that the Superseding Indictment violated 8 GCA § 65.30, and that the trial court abused its discretion in admitting various pieces of evidence relating to Guam Rules of Evidence Rule 404(b), allowing beyond the scope questioning of San Nicolas by Plaintiff-Appellee People of Guam (the “People”) on cross-examination, and limiting the cross-examination of certain witnesses testifying against San Nicolas. Because these issues pertain to San Nicolas’s latest trial, and because we find that the trial court lacked jurisdiction in order to proceed with that trial, these additional issues are now moot and we decline to exercise our discretion to invoke any applicable exceptions to the mootness doctrine in light of the reversal and remand. See *People v. Cruz*, 2016 Guam 15 ¶ 37.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] The underlying facts of this case are brought to this court for the second time. In the first trial, San Nicolas was indicted by a Superior Court grand jury and found guilty of fifteen counts of First Degree CSC, one count of Second Degree CSC, and one count of Child Abuse. *People v. San Nicolas*, 2013 Guam 21 ¶¶ 2, 7 (hereinafter “*San Nicolas I*”). Because of a defect in that amended indictment (“Amended Indictment”), this court reversed and vacated the First and Second Degree CSC convictions, remanded the matter to the trial court for further proceedings not inconsistent with the opinion, and upheld the conviction for Child Abuse.

[4] The *San Nicolas I* opinion was issued on November 5, 2013. On November 7, 2013, the trial court set a scheduling order to retry San Nicolas. Thereafter, on November 12, 2013, a Superior Court grand jury returned the Superseding Indictment charging San Nicolas with fifteen counts of First Degree CSC in violation of 9 GCA § 25.15(a)(2) and (b), one count of Second Degree CSC in violation of 9 GCA § 25.20(a)(2) and (b), and fifteen counts of Third Degree CSC in violation of 9 GCA § 25.25(a)(1) and (b). That same day, the trial court issued a penal summons for San Nicolas to appear and answer to the charges contained in the Superseding Indictment. The Superseding Indictment and penal summons both contained the same Superior Court case number as *San Nicolas I*. The *San Nicolas I* mandate (“Mandate”) from this court did not issue until November 29, 2013. Following two continuances, San Nicolas was arraigned on December 4, 2013, when he pleaded not guilty to all charges from the Superseding Indictment and again asserted his right to a speedy trial.³ Trial Setting Hearing was set for December 13, 2013.

³ The record reveals that San Nicolas initially asserted his right to a speedy trial on November 7, 2013. The trial court, in its January 14, 2014 Decision and Order, adopted the earlier of the assertion dates because the trial court was conscious of San Nicolas’s continued incarceration.

[5] A petit jury was empaneled on January 2, 2014. On the fourth day of the jury trial, January 8, 2014, San Nicolas filed a motion to dismiss the Superseding Indictment based on jurisdictional grounds. The trial court denied the motion on January 14, 2014, reasoning that because the trial court was conscious of San Nicolas’s continued incarceration, his assertion to a speedy trial, and the fact that jurisdiction was never challenged when San Nicolas reasserted his right to a speedy trial, it was steadfast in bringing the matter to trial and found that it did not lack jurisdiction pending receipt of the Mandate. On January 10, 2014, the People filed another indictment in an attempt to amend the Superseding Indictment. The new indictment charged San Nicolas with the same offenses less the Third Degree CSC charge.

[6] On January 21, 2014, the jury found San Nicolas guilty of counts one and fifteen of First Degree CSC, count one of Second Degree CSC, and counts two through nine of Third Degree CSC as a lesser included offense of First Degree CSC. The jury found San Nicolas not guilty of counts ten through fourteen of First Degree CSC. Sentencing was held on August 18, 2014. Judgment was entered on February 12, 2015.

[7] San Nicolas filed a timely notice of appeal on February 23, 2015. He is currently in custody at the Guam Department of Corrections.

II. JURISDICTION

[8] This court has appellate jurisdiction over this matter pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 114-143 (2016)); 7 GCA §§ 3107 and 3108(a) (2005); and 8 GCA § 130.15(a) (2005).

III. STANDARD OF REVIEW

[9] Questions of jurisdiction involve interpretation of the applicable statutes concerning such jurisdiction. *See People v. Quichocho*, 1997 Guam 13 ¶ 3. “Issues of statutory construction and

jurisdiction are reviewed *de novo*.” *Id.* (emphasis added) (citing *United States v. Brian N.*, 900 F.2d 218, 220 (10th Cir. 1990); *United States v. Lewis*, 67 F.3d 225, 228 (9th Cir. 1995)).

IV. ANALYSIS

[10] The threshold issue in this case is whether the trial court was re-vested with jurisdiction to continue with matters concerning San Nicolas’s case pending the issuance of the *San Nicolas I* Mandate from this court.

[11] San Nicolas argues that his convictions should be void for the trial court’s lack of subject matter jurisdiction. *See* Appellant’s Br. at 7-8 (May 27, 2015). He contends that the trial court did not have jurisdiction to take any actions concerning his case, such as receiving the Superseding Indictment and proceeding with trial, when *San Nicolas I* was still under the jurisdiction of this court. *See id.* In rebuttal, the People claim that the Superseding Indictment was valid since it was in direct response to our opinion filed on November 5, 2013. Appellee’s Br. at 6 (July 6, 2015). The People argue that the Mandate, filed on November 29, 2013, only verified that a certified copy of the November 5, 2013 judgment was sent to each party. *Id.* at 7. Further, the People contend that an opinion or judgment by this court is final under Rule 27(c)(5) of the Guam Rules of Appellate Procedure (“GRAP”), which states that when a case is remanded, this court does not retain jurisdiction. *Id.* The trial court, in its January 14, 2014 decision and order, partly reasoned that it had jurisdiction over the case because San Nicolas did not challenge the trial court’s jurisdiction when he re-asserted his right to a speedy trial at the December 4, 2013 arraignment. RA, tab 183 at 3 (Dec. & Order: Def.’s Mot. Dismiss Superseding Indictment & Mot. Stay Proceedings, Jan. 14, 2014) (“[San Nicolas] was still

arraigned at a time after the mandate was received by [the trial court], and jurisdiction was never challenged.”⁴

A. The Supreme Court of Guam’s Jurisdiction

[12] We are conferred with jurisdiction over a case by way of statutory authority. In particular, certain provisions of the United States Code and Title 7 of the Guam Code Annotated grant jurisdiction over a case. The Organic Act states that “[we] shall have jurisdiction to hear appeals over any cause in Guam decided by the Superior Court of Guam or other courts established under the laws of Guam.” 48 U.S.C.A. § 1424-1(a)(2). The Guam Code Annotated also states that “[we] shall have authority to review all justiciable controversies and proceedings, regardless of subject matter or amount involved.” 7 GCA § 3107(a).

B. Filing a Notice of Appeal and the Divestiture Rule

[13] Before addressing San Nicolas’s arguments on appeal, we first briefly discuss the results of both the trial court’s and our court’s jurisdiction over a case when a notice of appeal is filed. The filing of a valid notice of appeal has two primary effects: (1) it confers jurisdiction on the appellate court, and (2) the lower court is divested of its jurisdiction over the matter(s) on appeal. *See Hemlani v. Flaherty*, 2002 Guam 10 ¶ 6 (citing *Dumaliang v. Silan*, 2000 Guam 24 ¶ 14; *Bitanga v. Superior Court (Angoco)*, 2000 Guam 5 ¶ 22). These effects occur immediately upon filing the notice of appeal and the transfer of jurisdiction to this court attaches *instanter*. *See People v. Evans*, 2015 IL App (3rd) 140753, ¶ 13 (citations omitted). Concerning this effect, “once a notice of appeal has been filed, the trial court loses the power to take any *substantive*

⁴ We disagree with the trial court’s reasoning. Motions pertaining to defects in the indictment pursuant to the fact that it fails to show jurisdiction in the court, need not be raised prior to trial nor does the failure to raise the argument before trial act as a defendant’s waiver of jurisdiction. *See* 8 GCA § 65.15(b) (2005) (discussing which motions must be filed before a trial begins. Subsection (b) states “[d]efenses and objections based on defects in the indictment, information or complaint (*other than that it fails to show jurisdiction in the court . . .*)” (emphasis added)). Therefore, jurisdiction may be challenged at any time.

action with respect to the order or judgment on appeal.” *Bell v. United States*, 676 A.2d 37, 40-41 (D.C. 1996) (emphasis added) (footnote omitted). This concept is otherwise known as the “divestiture rule,” which is a “judge-made rule designed to avoid confusion or waste of time from having two courts considering the same issues at the same time.” *Dumaliang*, 2000 Guam 24 ¶ 14 (citation omitted). Here, San Nicolas filed his notice of appeal on May 18, 2012. RA, tab 105 at 1 (Notice of Appeal, May 18, 2012). As such, the divestiture rule was triggered and jurisdiction over San Nicolas’s case transferred from the trial court to this court on the notice of appeal’s filing date, May 18, 2012.

C. Jurisdictional Effects Upon Issuing a Mandate

[14] The People’s claim is correct in that after appellate review and when we remand a case, we do not retain jurisdiction over the subject matter. *See* GRAP 27(c)(5) (“If the case is remanded, the Supreme Court does not retain jurisdiction, and a new notice of appeal or petition for review will be necessary if a party seeks the Supreme Court’s review of the proceedings conducted on remand.”). However, the remand is not effective until our mandate has issued. *See* GRAP 27(c)(3). Appellate courts have urged caution to lower courts from acting before a mandate has issued or after a mandate has been recalled because it “risks acting without jurisdiction and wasting judicial resources.” *United States v. Hickey*, 580 F.3d 922, 927 (9th Cir. 2009) (citation omitted); *see also Nat. Res. Def. Council, Inc. v. County of Los Angeles*, 725 F.3d 1194, 1203 (9th Cir. 2013) (“No opinion of the circuit becomes final until the mandate issues.” (quoting *Carver v. Lehman*, 558 F.3d 869, 878 (9th Cir. 2009))); *Hunter Douglas Corp. v. Lando Prods., Inc.*, 235 F.2d 631, 632-33 (9th Cir. 1956) (“The trial court was thereafter without authority to act in matters relating to the subject matter until the mandate was returned.”). The Guam Rules of Appellate Procedure also support the previous holdings. *See* GRAP 27(b)(2)(A)

“The [Supreme Court] Clerk must prepare, sign, and enter the judgment: (i) after receiving the Supreme Court’s opinion”). “Unless the court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the Supreme Court’s opinion, if any, and any direction about costs.” GRAP 27(c)(1). The “mandate must issue seven (7) calendar days after the time to file a petition for rehearing expires, or seven (7) calendar days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later,” and “is effective when issued.” GRAP 27(c)(2), (3). Only after the trial court receives this court’s mandate, does our jurisdiction over the appeal or its proceedings transfer to the trial court to make the necessary orders to carry out the judgment.⁵ As such, contrary to the People’s contention, a mandate does more than verify certified copies of an opinion have been sent to each party. Issuing a mandate officially reverts jurisdiction over a subject matter back to the trial courts. *See United States v. Rivera*, 844 F.2d 916, 920-21 (2d Cir. 1988) (“Simply put, jurisdiction follows the mandate.” (citing Fed. R. App. P. 41; *Ostrer v. United States*, 584 F.2d 594, 598 (2d Cir. 1978))); *Kusay v. United States*, 62 F.3d 192, 193-94 (7th Cir. 1995) (“Just as the notice of appeal transfers jurisdiction to the court of appeals, so the mandate returns it to the district court. Until the mandate issues, the case is ‘in’ the court of appeal, and any action by the district court is a nullity.” (citations omitted)); *see also United States v. DeFries*, 129 F.3d 1296, 1302-03 (D.C. Cir. 1997) (“The district court does not regain jurisdiction over those issues until the court of appeals issues its mandate.” (citations omitted)).

⁵ Similarly, the Supreme Court does not retain jurisdiction over a case if it is remanded. *See* GRAP 27(c)(5) (“If the case is remanded, the Supreme Court does not retain jurisdiction, and a new notice of appeal or petition for review will be necessary if a party seeks the Supreme Court’s review of the proceedings conducted on remand.”).

[15] Here, unique events occurred in that the Mandate was issued after the trial court accepted and filed the Superseding Indictment but before the commencement of San Nicolas’s trial on charges in the Superseding Indictment.⁶ The Guam Superior Court grand jury returned the Superseding Indictment on November 12, 2013, and the Mandate was filed on November 29, 2013. RA, tab 119 at 1 (Superseding Indictment); RA, tab 183 at 2 (Dec. & Order: Def.’s Mot. Dismiss Superseding Indictment & Mot. Stay Proceedings). Although a grand jury may operate on its own accord without authorization from the constituting court,⁷ San Nicolas’s argument is correct in that the trial court must have jurisdiction over a subject matter in order to accept an indictment. See 8 GCA § 50.54(a) (“An indictment is an accusation in writing, presented by a grand jury to a *competent court*” (emphasis added)). Section 50.54(a) is derived from California Penal Code section 889. *Id.*, NOTE. The California Penal Code defines a “‘competent court’ when used with reference to the jurisdiction over any public offense, [as] any court the subject matter jurisdiction of which includes the offense so mentioned.” Cal. Penal Code § 691(a) (West 2016). “Generally, when a legislature adopts a statute which is identical or similar to one in effect in another jurisdiction, it is presumed that the adopting jurisdiction applies the construction placed on the statute by the originating jurisdiction.” *People v. Castro*, 2016 Guam 16 ¶ 21 (quoting *Sumitomo Constr. Co. v. Zhong Ye*, 1997 Guam 8 ¶ 7). Therefore,

⁶ The events in the instant appeal differ from other cases where a defendant was re-tried and convicted before the mandate was filed, and in a subsequent appeal, the appellate court rendered those convictions void for lack of jurisdiction. See *Powers v. State*, 579 N.E.2d 81, 83 (Ind. Ct. App. 1991); see also *DeFries*, 129 F.3d at 1301-03.

⁷ Grand juries do not require “authorization from its constituting court to initiate an investigation, nor does the prosecutor require leave of court to seek a grand jury indictment.” *United States v. Williams*, 504 U.S. 36, 48 (1992) (citation omitted). “Unlike [a] [c]ourt, whose jurisdiction is predicated upon a specific case or controversy, the grand jury ‘can investigate merely on suspicion that the law is being violated, or even because it wants assurance that it is not.’” *Id.* (alterations in original) (quoting *United States v. R. Enter., Inc.*, 498 U.S. 292, 297 (1991)).

in Guam, courts must have subject matter jurisdiction in order to be presented with an indictment.

[16] The prosecution returned the Superseding Indictment to the trial court on November 12, 2013. RA, tab 119 at 1 (Superseding Indictment). However, between May 18, 2012 (*San Nicolas I* notice of appeal filing date) and November 29, 2013 (Mandate filing date), the trial court was divested of jurisdiction and the Supreme Court had jurisdiction over the San Nicolas case. As such, consistent with procedural law, when the trial court received from the grand jury the Superseding Indictment, it acted prematurely as the Mandate was not yet filed and jurisdiction over San Nicolas's subject matter was not reverted to the trial court. The trial court should not have accepted the Superseding Indictment nor have gone forward with the case until the Mandate from *San Nicolas I* was filed.

D. Superseding Indictment

[17] Once a notice of appeal is filed, the trial court loses the power to take any substantive action with respect to the judgment or order on appeal. *See Rivera*, 844 F.2d at 921; *Kusay*, 62 F.3d at 193-94; *Bell*, 676 A.2d at 40-41. To supplement the argument that the subject matter from *San Nicolas I* was the same subject matter as the Superseding Indictment, the government elected to file a "superseding indictment" rather than an entirely new indictment. "A superseding indictment is an indictment *filed before the original or underlying indictment is dismissed.*" *People v. Flores*, 2009 Guam 22 ¶ 18 (emphasis added) (citation omitted). "In a *reindictment* case, a new indictment is filed when the original or underlying indictment or charges are dismissed." *Id.* (emphasis added). The original or underlying indictment in this case was not yet dismissed until the Mandate was issued. By electing to file a Superseding Indictment, the People, in effect, conceded that the underlying indictment from *San Nicolas I*

was not yet dismissed. More so, the conviction on the Child Abuse charge from the Amended Indictment was valid and stood notwithstanding this court vacating the First and Second Degree CSC convictions. *See San Nicolas I*, 2013 Guam 21 ¶ 28.

[18] Before the Mandate was filed, not only did the prosecution return the Superseding Indictment, the trial court also entered a scheduling order, RA, tab 117 at 1 (Scheduling Order, Nov. 7, 2013), and issued a penal summons for San Nicolas to appear and answer to the charges contained in the Superseding Indictment. RA, tab 121 at 1 (Penal Summons, Nov. 12, 2013). The Superior Court case number on all of these documents and the *San Nicolas I* case was the same. These constitute substantive actions by the trial court, seemingly in response to our opinion from *San Nicolas I*, done prematurely and without subject matter jurisdiction. *See Evans*, 2015 IL App (3rd) 140753, ¶ 13 (stating that and citing to several cases that support that on remand from the reviewing court, the trial court does not regain jurisdiction until it files the reviewing court's mandate). As a matter of criminal procedure, the trial court was without subject matter jurisdiction to act on the Superseding Indictment until this court filed the Mandate, and it also lacked authority to proceed with San Nicolas's trial.⁸ More so, the prosecution acted prematurely in returning the grand jury indictment on November 12, 2013, before the Mandate from *San Nicolas I* was issued on November 29, 2013. In order to ensure that subject matter jurisdiction is reverted back to the trial court, it is necessary for the

⁸ In other jurisdictions, the government may pursue an appeal from a trial court order dismissing an indictment, and while that appeal is pending, file a new pleading charging the same offense against a defendant and proceed to trial on the second indictment. *See Anderson v. Superior Court of Solano County*, 428 P.2d 290, 290 (1967); *see also Irvin v. State*, 328 A.2d 329, 333-34 (Md. Ct. Spec. App. 1974). A distinguishing factor in those cases and the instant case is that the original indictment was officially dismissed at the trial court level, and not dismissed before the appellate court. The government could not proceed with a trial in those cases because a valid indictment was not in effect. Here, the People filed the Superseding Indictment after a full jury trial and after this court ruled the amendment to the original indictment as void.

prosecution to refrain from returning an indictment for a case that this court remands for a new trial until the mandate is issued.

E. Divestiture Rule Exceptions

[19] We recognize that a trial court may still retain jurisdiction over a defendant's subject matter, despite notice of an appeal, if the trial court takes action that is in aid or in furtherance of the appeal. *Hemlani*, 2002 Guam 10 ¶ 6 (citing *Dumaliang*, 2000 Guam 24 ¶ 14). Trial courts taking action to "correct clerical mistakes, or in aid of execution of a judgment that has not been superseded, until the mandate has been issued by the [appellate court]" also constitute exceptions to the divestiture rule. *In re Thorp*, 655 F.2d 997, 998 (9th Cir. 1981) (citing *G & M, Inc. v. Newbern*, 488 F.2d 742, 746 (9th Cir. 1973); *Bailey v. Henslee*, 309 F.2d 840, 844 (8th Cir. 1962)). More so, a trial court may retain jurisdiction for the purpose of resolving still-pending motions in the underlying matter with its jurisdiction expiring after the resolution of the last motion. *Dixon v. Clem*, 492 F.3d 665, 679 (6th Cir. 2007) (citing Fed. R. App. P. 4(a)(4)(B)(i)).

[20] Instances where an exception to the divestiture rule applied include a trial court issuing a pre-trial ruling while an interlocutory appeal was pending, *Hickey*, 580 F.3d at 927; the trial court setting the conditions of release of a prisoner, *Bitanga*, 2000 Guam 5; the trial court hearing and denying a motion for relief from judgment, *Hemlani*, 2002 Guam 10; and the trial court issuing orders pending an appeal in order to enforce its judgment, *Dixon*, 492 F.3d at 679-80; see also *In re Grand Jury Proceedings Under Seal*, 947 F.2d 1188 (4th Cir. 1991); *Dumaliang*, 2000 Guam 24.

[21] To illustrate, *In re Grand Jury Proceedings Under Seal* involved a case where the trial court filed a written order after a defendant's notice of appeal. 947 F.2d at 1190. At a hearing on March 11, the defendant filed a motion to stay court proceedings and the trial court denied

that motion. *Id.* Thereafter, the defendant filed a notice of appeal before the trial court filed its written order denying the defendant's motion. *Id.* The defendant challenged the denial for lack of jurisdiction since it was done after the notice of appeal. *Id.* After review, the Fourth Circuit concluded that the trial court held jurisdiction to file the order because the "[trial] court had already announced its ruling in the March 11 hearing prior to the filing of the notice of appeal. The written order simply memorialized the [trial] court's oral ruling. It aids the appeal by giving [the court] a written order to review." *Id.*

[22] We do not find that an exception to the divestiture rule applies. A trial court acts in a manner that is "in aid or in furtherance of an appeal" when the actions relate to the matter for which a defendant filed a notice of appeal. *See, e.g., Dixon*, 492 F.3d at 679-80; *see also In re Grand Jury Proceedings Under Seal*, 947 F.2d at 1188; *Dumaliang*, 2000 Guam 24. In the instant case, the circumstances differ. The actions taken by the trial court were in response to the remanded case, not in relation to the underlying appeal from *San Nicolas I*. The return of the Superseding Indictment, scheduling order, and issuance of a penal summons did not relate to the underlying appeal from *San Nicolas I*. Instead, these actions constitute initial matters for a new jury trial for the charges that we reversed in *San Nicolas I*.

[23] The purpose of the divestiture rule is to prevent a trial court and appellate court from considering the same issues simultaneously. San Nicolas's second trial charged him with the same offenses that this court was considering on appeal. Although the *San Nicolas I* opinion was filed, the rulings were not finalized until the Mandate issued. Pending issuance of the mandate, this court may have amended the opinion, granted a petition for rehearing or granted a stay of the mandate. Although such events did not in fact occur, beginning the trial process for the same

charges that this court had subject matter jurisdiction over ran the risk of considering the same issues simultaneously.

[24] Therefore, we are not persuaded that the actions taken, before this court filed the Mandate from *San Nicolas I*, were “in aid or in furtherance of the appeal.” More so, we find that the divestiture rule exceptions do not apply in this instance.

V. CONCLUSION

[25] The dispositions from any Supreme Court of Guam opinion are not finalized until this court issues the relevant mandate. Jurisdiction does not revert to a trial court until the mandate is issued.

[26] Accordingly, we find that the Supreme Court still retained jurisdiction and the trial court was not a competent court when the prosecution returned the Superseding Indictment and when the trial court issued a scheduling order and penal summons because the *San Nicolas I* Mandate was not yet issued by this court. Therefore, the Superseding Indictment was invalid for lack of jurisdiction and San Nicolas’s convictions emerging as a result of the Superseding Indictment are also invalid.

[27] We **REVERSE** and **VACATE** the judgment of convictions, and **REMAND** to the trial court for further proceedings not inconsistent with this opinion.

/s/

F. PHILIP CARBULLIDO
Associate Justice

/s/

KATHERINE A. MARAMAN
Associate Justice

/s/

ROBERT J. TORRES
Chief Justice