IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

JOHN J. MANIBUSAN,
Defendant-Appellant.

Supreme Court Case No.: CRA16-002
Superior Court Case No.: CF0217-11

OPINION

Cite as: 2016 Guam 40

Appeal from the Superior Court of Guam
Argued and submitted on July 5, 2016
Hagåtña, Guam

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

CARBULLIDO, J.:

[1] Defendant-Appellant John J. Manibusan appeals from a judgment convicting him of Identity Theft (as a Third Degree Felony). Manibusan was sentenced to five years of incarceration to be served consecutively with any existing sentence. He requested credit for time served, which the trial court denied. Manibusan appeals his sentence claiming that the trial court improperly ruled that he has not accumulated credit for time served and his sentencing term should run concurrently.

[2] For the reasons stated below, we affirm the sentencing terms.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] Manibusan was indicted by a grand jury for one count of Fraudulent Use of a Credit Card (as a Misdemeanor) and one count of Identity Theft (as a Third Degree Felony) in Superior Court Case Number CF0217-11. On April 27, 2011, the Superior Court released Manibusan on a $5,000 performance bond and set other conditions for release.

[4] While on release for CF0217-11, on June 25, 2011, a magistrate complaint was filed against Manibusan for acts separate and apart from CF0217-11. The Superior Court case number in this other matter is CF0332-11. Manibusan was charged with, among other crimes, a special allegation of Commission of a Felony While on Felony Release in violation of 9 GCA § 80.37.1.[1] A magistrate hearing was held later that day. At the magistrate hearing for CF0332-11, the trial court iterated the new charges, found probable cause to charge Manibusan with the

[1] At the time Manibusan was charged, Guam's felony release statute was found at 9 GCA § 80.37.5. That section has since been renumbered to 9 GCA § 80.37.1.

crimes, and appointed him the same trial attorney from CF0217-11. The trial court then asked the People for a bail recommendation for Manibusan. The discussion proceeded as follows:

> THE COURT: [I]s there a recommendation for Mr. Manibusan?
>
> THE PEOPLE: . . . The People recommend $15,000, cash bail: 10,000 for the new charge, and 5,000 for his violation on his release conditions on felony, on felony release [sic].
>
> THE COURT: Mr. Manibusan, the government is recommending that the court keep you in custody until you come up with $15,000, in cash. . . .
>
> One of the things the court has to consider is your ability to obey prior orders. You were on pre-trial release on another felony. The court's not comfortable that you can follow its orders if it releases you.
>
> The court will order you be held on $15,000, cash bail. If you're able to make that bail, you'll be returned to the court for conditions. A preliminary hearing will be scheduled for July 5, at four o'clock. By that day, and that time, you should be indicted by the grand jury, or appear in front of the *ex parte* judge for the preliminary hearing.

See People v. Manibusan, CF0217-11 (Def. John Joseph Manibusan's Mot. Release Pending Sentencing, Ex. 1 at 1 (CF0332-11 Magistrate's Hearing, June 25, 2011) (May 13, 2016)) (alteration in original). The People requested to join the offenses for both CF0217-11 and CF0332-11.

[5] For CF0217-11, jury selection began on January 9, 2014. An Amended Indictment was filed on January 13, 2014, which excluded the charge for Fraudulent Use of a Credit Card because the statute of limitations expired. A guilty verdict for the sole charge of Identity Theft was returned.

[6] The trial court held the sentencing hearing for CF0217-11 on May 12, 2014. Manibusan was sentenced to "*ten . . . years[']* incarceration at the Department of Corrections in Mangilao, *to*

be served consecutively to any sentence defendant is currently serving" and ordered to pay restitution. Record on Appeal ("RA"), tab 81 at 1-2 (Judgment, July 31, 2014). The People submitted a brief, at the request of the court, which argued that Manibusan "should not receive any credit for time served, as [Manibusan] was incarcerated on another case pending trial for the case at bar." RA, tab 78 at 2 (People's Sentencing Br., May 30, 2014). Manibusan did not file a brief but defense counsel did argue the matter during sentencing, and at a motion hearing. According to the People's Sentencing Brief, defense counsel asserted during sentencing that Manibusan "should receive credit for approximately three years' time already served in prison." *Id.*

[7] The trial court issued a decision and order amending the sentence from ten to five years of incarceration based on a matter unrelated to this appeal. In its decision and order, the trial court also ruled that Manibusan has not accumulated credit for time served in CF0217-11. The trial court also determined that the term imposing consecutive incarceration to any existing sentence was not illegal.

[8] On the issue of credit for time served, the trial court inquired into the conduct for which the period of detention was imposed upon Manibusan. The trial court reasoned that Manibusan "was released on the first offense, CF0217-11, on a $5,000 bond that has never been revoked." RA, tab 89 at 2 (Dec. & Order on Def.'s Mot. Correct Illegal Sentence, Jan. 9, 2015) (hereinafter cited as "Dec. & Order"). The trial court also stated that the minutes for the magistrate hearing for CF0332-11 showed that Manibusan was held pending the posting of a $15,000 bond for that case. The trial court also stated that 9 GCA § 80.46 does not apply because the conduct for which Manibusan was held differs from the sentencing offenses in CF0217-11. It concluded that "between the time of [Manibusan's] arrest for CF0332-11 and the sentencing hearing for

CF0217-11 on May 12, 2014, [Manibusan] accumulated no credit for time served in [CF0217-11]." *Id.* at 8.

[9] On the matter of consecutive sentencing, the trial court reasoned that its decision to impose a consecutive sentence was legal because the trial court "retains a common law authority to impose consecutive sentences to existing sentences where it deems appropriate and not otherwise provided by law." *Id.* at 4. The trial court also stated that although Guam's Legislature requires "courts to impose consecutive sentencing" in instances where certain statutes apply, "this does not imply that consecutive sentencing is otherwise forbidden." *Id.* at 5. Lastly, the trial court reasoned that the record also supported its decision to impose a consecutive sentence because Manibusan was an active member in the criminal justice system and, "in spite of treatment and rehabilitation provided" to Manibusan, he was still committing criminal acts. *Id.*

[10] For CF0332-11, Manibusan and the People entered into a plea agreement on November 20, 2015. The Judgment for CF0332-11 was filed on January 8, 2016. The sentencing terms for CF0217-11 are reflected in the trial court's judgment. Manibusan filed a timely notice of appeal for CF0217-11.

II. JURISDICTION

[11] This court has jurisdiction over this appeal pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw current through P.L. 114-254 (2016)); 7 GCA §§ 3107(b) and 3108(a) (2005); and 8 GCA §§ 130.10 and 130.15(a) (2005).

III. STANDARD OF REVIEW

[12] Manibusan challenges the trial court's sentencing terms. "The imposition of a sentence by the trial court is reviewed for an abuse of discretion." *People v. Joshua*, 2015 Guam 32 ¶ 20

(citing *People v. Diaz*, 2007 Guam 3 ¶ 10). "An abuse of discretion results where the sentence '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.'" *Id.* ¶ 33 (quoting *People v. Tedtaotao*, 2015 Guam 9 ¶ 8). Reviewing the imposed sentencing terms also requires statutory interpretation which we review *de novo*. *See id.* ¶ 20 (citing *People v. Felder*, 2012 Guam 8 ¶ 9).

IV. ANALYSIS

A. The Trial Court Did Not Abuse Its Discretion in Denying Credit for Time Served

[13] Manibusan maintains that because the trial court imposed a $15,000 cash bail, which included $5,000 cash bail for violation of his felony release conditions, the trial court effectively revoked his bail conditions for CF0217-11. Appellant's Br. at 4 (May 9, 2016). He also asserts that $5,000 cash bail was imposed for CF0217-11 because the trial court exercised its power pursuant to 8 GCA § 40.75(b), revoking Manibusan's previous release conditions. *See* Appellant's Reply Br. at 1-3 (May 23, 2016). Manibusan contends that because his bail conditions for CF0217-11 were allegedly revoked, he was therefore detained for CF0217-11 at the June 25, 2011 hearing and should receive credit for time served from that date. *See* Appellant's Br. at 3-4.

[14] The People maintain that what transpired at the June 25, 2011 hearing does not support Manibusan's argument that the hearing modified his previous conditions of release for CF0217-11. *See* Appellee's Br. at 9 (May 18, 2016). The People note that they did not request modification of previous release conditions imposed in CF0217-11 and the court did not make a statement that it was modifying those conditions. *Id.* at 10. The People also state that "once conditions of release have been imposed, they cannot later be modified . . . unless such modification is made upon application by a party." *Id.* at 10 (citing *People v. Song*, 2011 Guam

19 ¶¶ 19-21). It is the People's position that from June 25, 2011, forward, Manibusan was not "detained" in CF0217-11 and he was not entitled to automatic credit under the law. *See id.* at 12-13.[2]

[15] Defendants enjoy a statutory right to receive credit for time served for any period of a prior detention "for the conduct for which such sentence is imposed." *See* 9 GCA § 80.46(a) (2005); *see also People v. Mallo*, 2008 Guam 23 ¶¶ 24-27. The credit for time served is mandatory under the provisions of 9 GCA § 80.46(a) when certain circumstances are present. *See* 9 GCA § 80.46(a); *Mallo*, 2008 Guam ¶ 27 ("When the rule applies, the credit is mandatory." (quoting *State v. Hemphill*, 917 A.2d 247, 250 (N.J. Super. Ct. App. Div. 2007), *cert. denied*, 926 A.2d 853 (N.J. 2007))). Title 9 GCA § 80.46(a) states in its entirety:

> (a) When an offender who is sentenced to imprisonment has previously been detained in any territorial state or local correctional or other institution, *for the conduct for which such sentence is imposed*, such period of detention shall be deducted from the maximum and minimum term of such sentence. The officer having custody of the offender shall furnish a certificate to the court at the time of sentence, showing the length of such detention of the offender prior to sentence in any territorial, state or local correctional or other institution, and the certificate shall be attached to the official records of the offender's commitment.

9 GCA § 80.46(a) (emphasis added). It is clear from the statutory language that a defendant only receives credit for time served when the defendant has served time "for the conduct for which such sentence is imposed"—and not for detainment related to other offenses. *Id.*

[16] Thus, we must determine whether, as a result of the June 25, 2011 hearing, Manibusan was detained for his conduct stemming from acts in CF0217-11 or for his conduct stemming

[2] The People advance that Manibusan was detained for purposes of 9 GCA § 80.46 on May 12, 2014, when Manibusan was officially sentenced in connection with CF0217-11, and should receive credit for time served as of that date. *See* Appellee's Br. at 14. In support, the People note that once the jury returned a guilty verdict, "the trial court ordered that Manibusan should remain on his 'present conditions' . . . appear[ing] to imply that Manibusan was still under the conditions previously imposed for CF0217-11 at that point." *Id.* (citing Tr. at 70-72 (Jury Trial, Jan. 14, 2014)).

from acts in the second case, CF0332-11. We must also determine whether the trial court modified the CF0217-11 bail conditions at the June 25, 2011 hearing.

[17] According to 8 GCA § 40.75(b), "where the court finds that [a defendant] has willfully violated the conditions imposed on his release or that an indictment or information has been filed charging the person with the commission of an offense while released in the pending action, the court *may* revoke the [defendant's] release." 8 GCA § 40.75(b) (2005) (emphasis added). In *People v. Song*, 2011 Guam 19, we addressed whether a subsequent modification of a defendant's bail conditions violated the laws on modifying bail conditions. In *Song*, the defendant posted bail and was released. *Id.* ¶ 5. A new indictment for more serious crimes was later returned by a grand jury. *Id.* ¶ 6. The People then obtained an arrest warrant with an increased bail amount from a different judge. *Id.* The defendant was arrested and re-incarcerated pursuant to the warrant. *Id.* On review, we reinstated the first bail condition and noted that "[n]othing in Guam's bail statutes authorizes any judge, *absent application by either the person for whom release conditions are imposed or by the People*, to modify release conditions." *Id.* ¶ 20 (emphasis added).

[18] Here, the record does not reflect that either party moved the court to modify the bail conditions for CF0217-11. At the June 25, 2011 magistrate hearing, the People recommended $15,000 cash bail—"10,000 for the new charge, and 5,000 for his violation on his release conditions on . . . felony release"—and the court ordered Manibusan be held on $15,000 release. Tr. at 3-4, CF0332-11 (Magistrate Hr'g, May 5, 2016). The commitment order for CF0332-11 also indicates that Manibusan "be held in [Guam Detention Facility's] custody pending: posting of bail in the amount of $15,000 cash." People v. Manibusan, CF0332-11 (Commitment Order at 1 (June 25, 2011)).

[19] Also, it is evident from the magistrate hearing that the trial court relied on the fact that Manibusan was on pre-trial release in CF0217-11 as a factor supporting its decision to deny release on personal recognizance in CF0332-11. *See* Tr. at 4, CF0332-11 (Magistrate Hr'g) ("One of the things the court has to consider is your ability to obey prior orders. You were on pre-trial release on another felony."). Title 8 GCA § 40.15(b) permits a trial judge to deny release on recognizance when the judge determines "in his discretion, on the basis of available information, that such a release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community." 8 GCA § 40.15(b) (2005). Title 8 GCA § 40.15(c)(2)(viii) provides that a factor to consider is "whether, at the time of the current offense or arrest, he/she was . . . *on other release pending trial* . . . ." 8 GCA § 40.15(c)(2)(viii) (2005) (emphasis added). Therefore, the trial court's ruling that Manibusan should not be released on his own recognizance was properly supported by the fact that Manibusan was on other release pending trial.

[20] Pursuant to 9 GCA § 80.46, a defendant may receive credit for time served but the "officer having custody of the offender shall furnish a certificate to the court at the time of sentence, showing the length of such detention of the offender prior to sentence . . . and the certificate shall be attached to the official records of the offender's commitment." 9 GCA § 80.46(a) (2005). Manibusan does not point to any evidence that such a certificate was furnished to the court in order to establish the time for which Manibusan should receive credit. Nor does the record reflect that a request for such a certificate was made, or that the issue was in any way raised below.

[21] Accordingly, the record does not indicate that the magistrate hearing from June 25, 2011 modified Manibusan's bail conditions from CF0217-11. In the absence of express direction to

amend the previous bail, we cannot conclude that Manibusan's bail conditions from CF0217-11 were modified. Moreover, the record does not reflect that after this hearing, Manibusan was held in custody "for the conduct for which such sentence is imposed," 9 GCA § 80.46(a), in CF0217-11 because the commitment order—filed on June 25, 2011—clearly indicates the bail amount of $15,000 was for CF0332-11 and not CF0217-11. *See* People v. Manibusan, CF0332-11 (Commitment Order at 1 (June 25, 2011)).

[22] Manibusan is not entitled to receive credit for time served in CF0217-11 because he was not held in custody for the conduct for which his sentence in CF0217-11 was imposed. The trial court did not abuse its discretion in denying credit for time served in CF0217-11.

B. The Sentence in CF0217-11 Does Not Run Consecutive to Any Later-Imposed Sentence

[23] Manibusan next challenges the trial court's decision to impose a consecutive sentence for CF0217-11. Appellant's Br. at 7-10. He claims that at the time of sentencing, "there was no underlying sentence to which [his] sentence in CF0217-11 could run consecutively," and therefore, "that portion of the judgment is without meaning and essentially null and void ab initio." *Id.* at 8. Manibusan also asserts that, even if viewed as an "extended sentence," under 9 GCA § 80.38, the trial court "did not make the specific and required finding that extended incarceration . . . was necessary to protect the public." *Id.* at 8-9.

[24] The People agree with Manibusan's argument to the extent that the trial court's consecutive sentencing for CF0217-11 does not apply to the sentences imposed under CF0332-11 since the sentences under CF0332-11 were enforced at a later date. *See* Appellee's Br. at 16. "The language of the judgment would have been, however, effective to have the sentence imposed in CF0217-11 run consecutive to any *other* sentence or sentences Manibusan may have

been serving *at the time . . . .*" *Id.* The People conclude that arguments concerning consecutive versus concurrent sentencing have no legal effect on this appeal. *Id.* at 18.

[25] We conclude, as the People have conceded, that the consecutive sentencing term for CF0217-11 does not run consecutive to any later-imposed sentences. Since Manibusan was convicted and sentenced for a single offense in CF0217-11 and there is no evidence on the record that he was serving a sentence for any prior convictions, we need not address the trial court's common law powers to impose consecutive sentences.

V. CONCLUSION

[26] Based on the foregoing, Manibusan was not serving time for conduct under CF0217-11. Therefore, he will not receive credit for time served from the June 25, 2011 magistrate hearing. Furthermore, Manibusan's consecutive sentencing term cannot apply to any prospective sentencing terms. Lastly, we need not address the trial court's common law powers to impose consecutive sentences since Manibusan was convicted and sentenced for a single offense in this case and there is no evidence in the record that he was serving a sentence for a prior conviction for any consecutive sentence to apply.

[27] Accordingly, we **AFFIRM**.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
KATHERINE A. MARAMAN
Associate Justice

/s/
ROBERT J. TORRES
Chief Justice