

**IN THE SUPREME COURT OF GUAM
TERRITORY OF GUAM**

PEOPLE OF THE TERRITORY OF GUAM

Petitioner,

vs.

SUPERIOR COURT OF GUAM

Respondent,

vs.

JOSEPH ALEJO QUINT

Real Party in Interest.

Supreme Court Case No. WRM97-001
Superior Court Case No. CF0438-96

OPINION

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Petition for Writ of Mandamus
Argued and Submitted on March 12, 1997
Agana, Guam

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BEFORE: PETER C. SIGUENZA, Chief Justice, JANET HEALY WEEKS, and JOSE LEON GUERRERO¹, Associate Justices.

SIGUENZA, C.J.:

The People of the Territory of Guam petition this Court for a writ of mandamus directing the trial court to vacate a discovery order requiring disclosure of documents concerning an ongoing homicide investigation. Both real party in interest and respondent oppose the petition.

The facts and circumstances of this case, when applied to the standards under which this Court issues mandamus relief, lead us to conclude that extraordinary relief is not warranted. Accordingly, we deny the petition for writ of mandamus.

I. FACTUAL AND PROCEDURAL HISTORY

[1] The real party in interest, Joseph Quint, filed a written Motion for Discovery on January 16, 1997. Quint's motion requested several items of discovery from petitioner and specifically listed Guam police report #96-16587. The subject matter of this particular report is an ongoing homicide investigation consisting of approximately 2,000 pages of documents. Petitioner did not file a written response objecting to the requested items.

[2] Oral argument on the motion was heard on February 13, 1997 and later on February 19, 1997. Initially, the petitioner agreed to provide all of the requested items. However, after counsel for Quint voluntarily disclosed the subject matter of the police report, the petitioner retreated from this position and opposed divulging the information.

[3] In support of nondisclosure, the petitioner initially articulated two different arguments. First, petitioner argued that Quint was not entitled to the documents in question because they were not relevant to his case. Second, according to the petitioner, the ongoing homicide investigation would be jeopardized by disclosure. Petitioner later agreed, however, that some of these documents could be relevant to defendant's case. During the discussions of these issues, petitioner suggested that the court conduct an in camera review of the documents to verify his assertions.

[4] The trial court addressed these concerns and found that Quint had made a showing that the documents were material to his defense and that the request was reasonable. In addition, given this finding, the court stated that petitioner had not provided specific reasons why these items should not be turned over. The trial court consequently granted the motion for discovery and ordered the 2,000 pages turned over by March 6, 1997. Addressing the risk to the investigation, the trial court imposed a personal gag order on Quint and his counsel requiring that they not disclose information gained from the discovery. The court also declined to conduct an in camera review of the documents at that time. Instead, the court gave the petitioner time to review the documents and submit parts of the police report, under seal, with specific objections as to disclosure. Neither sealed documents nor objections were submitted.

[5] An ex-parte hearing was held on March 5, 1997. The petitioner asked the court to stay its previously issued discovery order pending the forthcoming writ. The court denied the request because the petitioner had not exhausted his available remedies. The court explained that the opportunity for in camera inspection previously made available to the petitioner had not yet been exercised. The court further explained that its prerequisite to in camera review, the submission of sealed documents

¹ Part time.

accompanied by specific written objections, had not been complied with. Because the petitioner asserted that the opportunity for in camera review was specifically precluded at the previous hearing, the court then clarified its ruling. The petitioner was specifically advised that in camera review was an option that could still be exercised. This option was not pursued. Instead, the petitioner filed the Petition for Writ of Mandamus seeking relief from the lower court's discovery order.

[6] The Court heard oral argument on this matter on March 12, 1997. Both real party in interest and the respondent objected to petitioner's reply brief based on its untimely filing. In addition, respondent objected as it had not been served with the documents. Petitioner did not dispute these objections.

II. DISCUSSION

[7] When a petition for a writ of mandamus comes before the Court, we must first decide whether mandamus relief would either be appropriate or necessary. This Court previously described mandamus relief as an extraordinary remedy that would be used in extreme situations. *Guam Publications, Inc. v. Superior Court of Guam v. People and Bruneman*, 1996 Guam 6, ¶10. We will employ the writ in order to "confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *Id.* (citations omitted). We require the petitioning party to bear the burden of justifying the issuance of a writ. *Kerr v. United States District Court For the Northern District of California*, 426 U.S. 394, 403 (1976).

[8] Issuance of a writ of mandamus is a matter of discretion. 7 GCA § 31401; *See also Kerr*, 426 U.S. at 403. To guide the exercise of our discretion, we balance, if applicable, the following factors: 1) Whether the party seeking the writ has no other adequate means, such as direct appeal, to attain the desired relief; 2) Whether the petitioner will be damaged or prejudiced in a way not correctable on appeal; 3) Whether the court's order is clearly erroneous as a matter of law; 4) Whether the court's order is an oft-repeated error, or manifests a persistent disregard of the rules; and 5) Whether the court's order raises new and important problems, or issues of law or first impression. *Guam Publications*, 1996 Guam 6, ¶ 11. These factors, however, will not relieve us of our own reasoned and independent analysis of the issues. *In re Cement Antitrust Litigation*, 688 F.2d 1297, 1301 (9th Cir. 1982). Thus, this framework of factors is a starting point in our determination of the propriety of mandamus relief. *Id.*

[9] Application of the factors to the facts of this case supports denial of writ relief. Of the five factors, four favor denial. In addition, consideration of other compelling circumstances leads us to this same conclusion.

[10] In this particular case, the first, second, and third factors are closely related and support the petition's denial. Petitioner argues that the trial court erred by failing to grant in camera review of documents mandated by 8 GCA § 70.35(a).² The argument fails based on two clear and independent grounds. First, Guam's statutory provision gives the trial court discretion to decide whether to conduct an in camera review. The language of the provision states:

² Petitioner also argues that the court disregarded the provisions of 8 G.C.A. § 70.15 by not placing the burden upon the defendant to show materiality as to the matters requested. For several different reasons, this argument is without merit. First, the record indicates that defense counsel argued several different points in support of his need for the documents. The court apparently accepted these arguments. Second, the record is replete with the petitioner's admissions that some of the documents could be discoverable by the defendant. Finally, petitioner asked the lower court to conduct an in camera review and then decide which materials should be turned over. Petitioner's framing of this particular request implicitly admits that documents were discoverable.

In Camera Matters. (a) Upon request of any person, the court *may* permit any showing of cause for denial or regulation of disclosures, or portion of such showing to be made in camera.

8 GCA § 70.35(a)(emphasis added).

[11] Chapter 5 of Guam Code Annotated provides both rules of construction and definitions that govern the construction of Guam’s criminal procedure code. The term “may” is specifically addressed within these provisions and is defined as “permissive.” 8 GCA § 5.23. The same statute alternatively defines the term “shall” to mean “mandatory.” 8 GCA § 5.23. With these definitions in mind, granting a request for in camera review, pursuant to 8 GCA § 70.35(a), clearly is a discretionary act of the court. Contrary to petitioner’s argument, nothing in the language of the statute would mandate a court to conduct such a review.

[12] Secondly, petitioner’s argument fails because the lower court, in fact, granted the request for in camera review. The record reveals that petitioner initially requested that the lower court conduct this type of review. The lower court declined the request, at that particular time, based on a lack of knowledge and guidance as to the material in question; not simply, as petitioner suggests, that the court “did not like in camera proceedings.” The record reveals that the court’s order did not preclude the possibility of an in camera review. The court announced that petitioner could submit portions of the documents to her under seal for review. The court further required specific objections accompany the sealed documents. Otherwise, all documents were to be turned over to defendant. This option was never utilized.

[13] The petitioner disputes this assertion by maintaining that the court’s only order was that the documents be turned over by March 6, 1997. Petitioner further asserts in camera review was denied outright. While we agree that the lower court’s ruling at the February 19, 1997 hearing could have been more clear, any confusion surrounding the order was clarified at the hearing held on March 5, 1997. In clear and unambiguous terms, the petitioner was again advised of the option for in camera review. Petitioner was also advised that the opportunity to submit the items was still a viable option.³ Thus, the record does not support petitioner’s claim of error. Adequate means to obtain relief existed at the trial level. Petitioner failed to take advantage of this relief even after the court’s reminder. Clearly, the court committed no error and any damage suffered by the petitioner is a result of its own inaction. Consequently, factors one, two, and three all support denying the petition for writ of mandamus.

[14] Nor does the fourth factor, pertaining to oft-repeated errors or persistent disregard for the rules, support issuance of the writ. Review of the petition indicates only petitioner’s subjective belief that the perceived error may occur often.

[15] In contrast, the fifth factor supports issuance of the writ. We acknowledge that most issues coming before us, for a time, will generally be of first impression. We thus focus on discovery matters generally and their importance to all cases.

[16] In addition to the above factors, the procedural history of this case influences our decision. The record reveals that petitioner has not been diligent in this matter. First, no opposition was filed in response to the written motion for discovery. Second, at oral argument, petitioner initially agreed to provide the

³ This Court demands candid and complete representations of the facts by litigants who appear before us, no matter how unfavorable those facts may be to their case. We are concerned with petitioner’s representations of the facts and circumstances surrounding the hearings below. For example, in light of the “inadequate relief” factor set out in *Guam Publications*, this Court fails to comprehend how discussions taking place at the March 5, 1997 ex-parte hearing were omitted from the petition. At that hearing, the lower court made clear that in camera review was still available to petitioner. We also note the petitioner’s characterization of the lower court’s statement regarding in camera reviews. Although the lower court judge stated that she disliked in camera proceedings, when viewed in context of the discussions, the judge’s position was based on a lack of knowledge and guidance as to materials in front of her.

discovery. An objection was raised only after opposing counsel's disclosures. Third, petitioner admittedly failed to review the discovery materials at issue. It is apparent that petitioner could not adequately help the court make a decision in support of nondisclosure. Fourth, by not submitting documents under seal with objections, petitioner failed to take advantage of the relief offered by the court. Finally, we note that petitioner's lack of diligence has also touched this Court. Petitioner, if he chose to do so, was to file a response to the oppositions by March 11, 1997. This deadline was missed and the response filed one day late. In addition, the document was not served on the respondent. Consequently, we do not consider petitioner's response to the oppositions.

III. CONCLUSION

[17] Given the limited nature of mandamus relief, the application of the above factors, and the other considerations we deemed important, denial of the writ is the appropriate course of action. The record neither supports nor justifies issuance of such extraordinary relief.