IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff,

vs.

BENJAMIN KING GAY,
Defendant.

Supreme Court Case No. CRQ07-001
Superior Court Case No. CF0069-03

OPINION

Filed: October 16, 2007

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Certified question from the Superior Court of Guam
Submitted on July 23, 2007
Hagåtña, Guam

BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, Associate Justice; RICHARD H. BENSON, Justice *Pro Tempore*.

CARBULLIDO, C.J.:

[1] This matter comes before the court upon the filing of a certified question of law by the Superior Court on July 23, 2007. The Superior Court is currently supervising a plea negotiation in a criminal trial and requests that this court determine whether it has the power to suspend a fifteen year minimum sentence for First Degree Criminal Sexual Conduct mandated under 9 GCA § 25.15(b). This request is made despite the fact that: (1) the defendant has not yet agreed to the plea agreement; (2) no sentencing hearing has yet been held; and (3) the lower court has indicated it would likely sentence the defendant to at least fifteen years on other grounds regardless of how this court answers the certified question. For the reasons set forth herein, we deny the request to answer the certified question.

I.

[2] On February 21, 2003, defendant Benjamin King Gay ("Gay") was indicted on multiple counts of First and Second Degree Criminal Sexual Conduct, in violation of 9 GCA §§ 25.15(a)(1) and 25.20(a), as well as multiple counts of Child Abuse in violation of 9 GCA § 31.30(a)(2)(C). The indictments resulted from incidents alleged to have occurred between 1996 and 2003 between Gay and his step-children.

[3] On January 26, 2005, Gay's wife, speaking for herself and her daughters, expressed through an affidavit her wish that Gay not be incarcerated. On December 13, 2005, a plea agreement was received by the Superior Court that included, among other things, an agreement by Gay to plead guilty to one count of First Degree Criminal Sexual Conduct under 9 GCA §§

25.15(a)(1) and (b). Also relevant to this discussion was Gay's agreement to abide by any imprisonment sentence decided by the court. According to 9 GCA § 25.15(b), a person convicted of First Degree Criminal Sexual Conduct "shall be sentenced to a minimum of fifteen (15) years imprisonment." 9 GCA § 25.15(b) (2005). The People filed a memorandum expressing their view that the plea agreement was appropriate.

[4] On June 1, 2006, Gay filed a memorandum regarding the court's authority to suspend the mandatory minimum sentence. He argued that 9 GCA § 80.10(a) gives the court the authority to suspend the minimum sentence for First Degree Criminal Sexual Conduct. The court orally rejected Gay's argument. On August 17, he filed a motion to certify the question of suspending minimum sentences to this court. On September 22, the lower court issued a decision agreeing to certify the question of law but leaving it to Gay to submit the certification. In its decision, the court indicated that it would not suspend the mandatory minimum sentence because: (1) it felt it lacked the authority under 9 GCA § 80.60(a); and (2) the statutory factors of 9 GCA § 80.60(b) as applied to the facts of the case justified not suspending the sentence. On July 2, 2007, Gay submitted the question for certification to the lower court, but that court, believing its own arguments to be misrepresented, wrote its own certification. The following question was finally certified on July 23, 2007: must Defendant be sentenced to a minimum of fifteen years under 9 GCA § 25.15(b) or would 9 GCA § 80.10 and 9 GCA § 80.60 permit a suspension of the sentence.

II.

[5] This court has jurisdiction over requests to hear certified questions pursuant to 7 GCA § 4105 and Rule 20(a) of the Guam Rules of Appellate Procedure. Section 4105 states in part that

"[a]ny judge of the Superior Court of Guam may certify a question of law to the Supreme Court of Guam for its opinion as to the interpretation of any law, federal or local, lying within the jurisdiction of the courts of Guam to decide, and arising in a case or proceeding then pending before the Superior Court." 7 GCA § 4105 (2005). Furthermore, Rule 20(a)(1) states in pertinent part:

> Only questions or propositions of law may be certified, and they must be distinct and definite . . . . If the Chief Justice determines that the local law has not been clearly determined, and it is necessary and desirable to ascertain the local law in order to dispose of the Superior Court's proceeding, then the certificate will be accepted.

Guam R. App. P. 20(a)(1). To be accepted, a certified question must meet all four of the following requirements: (1) the question must be a question of law; (2) the question must have not yet been clearly determined; (3) the question must be distinct and definite; and (4) the resolution of the question must be necessary and desirable to dispose of a pending case or proceeding.

III.

A. Questions Unnecessary to the Decision

[6] The United States Supreme Court, in discussing its own power to accept certified questions, has held that it will not accept questions that are unnecessary to the decision of the case. *See Busby v. Elec. Utils. Empl. Union*, 323 U.S. 72, 75 (1944). Nor will it accept certified questions that are academic, hypothetical, or speculative. *See Triplett v. Lowell*, 297 U.S. 638, 649 (1936) ("We are not required to answer academic questions, or questions which may not arise in the pending controversy."); *United States v. Mayer*, 235 U.S. 55, 66 (1914) ("It is a familiar rule that this court cannot be required . . . to answer questions of objectionable generality . . . or questions that are hypothetical and speculative."). Many state courts have also

refused to accept certified questions that are likely to be unnecessary to a resolution of the case. *See, e.g.*, *Butz v. World Wide, Inc*., 472 N.W.2d 757, 759 (N.D. 1991); *Empire Equip. Eng'g Co. v. Sullivan*, 565 A.2d 527, 529 (R.I. 1989); *Shell v. Metro. Life Ins. Co.*, 380 S.E.2d 183, 192-93 (W. Va. 1989).

[7] It is possible that Gay will receive at least a fifteen year sentence should he accept the current plea agreement, regardless of how the certified question is answered by this court. The Court expressed its intention to not suspend the minimum sentence regardless of the answer to the certified question, stating:

> [E]ven if the Supreme Court finds the Court was incorrect on how to deal with sentence suspensions, 9 G.C.A. § 80.60(b) would justify a denial of suspension because there is a risk that Defendant might commit the same crime, because Defendant is in need of correctional treatment, and because a suspension would "depreciate the seriousness" of Defendant's crime.

Certification of Question of Law, at 5 (July 23, 2007). Even if acceptance of the current plea agreement was a certainty, the answer to the certified question would be unnecessary to the case. Although resolving the certified question might change the dynamics of the plea negotiations or redefine possible avenues of appeal, these considerations fall into the categories of academic, hypothetical, or speculative outcomes. We therefore find that our answer to the certified question is unnecessary to "dispose of the Superior Court's proceeding" in this case. GRAP 20(a)(1).

B. Ripeness

[8] Additionally, we decline to hear the question because to do so would exceed prudential limits imposed by the ripeness doctrine. The ripeness doctrine exists for the purpose of preventing courts from entangling themselves in "abstract disagreements." *See Abbott Labs. v.*

Gardner, 387 U.S. 136, 148 (1967). Two factors must be considered in determining whether or not a controversy is ripe for adjudication: (1) whether the issue is fit for judicial consideration, and (2) the "hardship to the parties of withholding court consideration." *Id.* at 149; *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1141 (9th Cir. 2000) (quoting 387 U.S. at 149). A question or claim is fit for judicial consideration when "the issues raised are primarily legal, do not require further factual development, and the challenged action is final." *Verizon California Inc. v. Peevey*, 413 F.3d 1069, 1075 (9th Cir. 2005) (Bea, J., concurring) (quoting 387 U.S. at 149). On the other hand, "[a]n issue is not 'fit' for judicial review when it involves 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *United States. v. Dibiase*, 687 F. Supp. 38, 42 (D. Conn. 1988) (quoting *Thomas v. Union Carbide Agricultural Prod's Co.*, 473 U.S. 568, 580 (1985)) (finding a constitutional challenge to sentencing guidelines to be ripe because the defendant had already plead guilty).

[9] The certified question here is one of pure statutory interpretation that requires no factual development. However, the instant case concerns an event that has not yet occurred, that is, the potential failure of the Superior Court to suspend the minimum sentence. In fact, one cannot say with certainty whether this event will occur at all. It is entirely possible that the certified question could be answered by this court but never utilized in the proceedings of the court below. For example, if the final plea agreement were revised to include only charges without minimum sentences, our decision on the certified question would become entirely academic. Because Gay challenges a "contingent future event[] that may not occur as anticipated, or indeed may not occur at all," the certified question cannot yet be considered fit for judicial consideration. *Dibiase*, 687 F. Supp. at 42; *New Mexicans for Bill Richardson v. Gonzales*, 64 F.3d 1495, 1499

(10th Cir. 1995) (quoting 13A Wright, Miller & Cooper, *Federal Practice & Procedure* § 3532 at 112).

[10] With regard to hardship to the parties, withholding judicial consideration of the certified question may have the effect of delaying its consideration until Gay can appeal from a final judgment. True, Gay may experience diminished hope of avoiding incarceration until he can bring up the question again on appeal, but the actual final plea agreement and sentence are only future possibilities at this point. We cannot make a finding of hardship by simply entertaining speculative scenarios as to how Gay eventually may be sentenced. Thus, considering both the fitness and hardship factors, the certified question fails the *Abbott Labs* test for ripeness.

IV.

[11] Because an answer to the certified question would not dispose of the proceedings below, and because the question has not yet ripened into a justiciable controversy, we hold that this court cannot accept certification. Therefore, the Superior Court's request to answer the certified question is hereby **DENIED.**