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Supreme Court of Guam, Clerk of Court

IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

RAYMOND TEDTAOTAO CAMACHO,
Defendant-Appellant.

Supreme Court Case No.: CRA15-007
Superior Court Case No.: CF0583-12

OPINION

Cite as: 2016 Guam 13

Appeal from the Superior Court of Guam
Argued and submitted on October 22, 2015
Hagåtña, Guam

Appearing for Defendant-Appellant:

Terrence E. Timblin, *Esq.*
Yanza, Flynn, Timblin, LLP
One Agana Bay
446 E. Marine Corps Dr., Ste. 201
Hagåtña, GU 96910

Appearing for Plaintiff-Appellee:

Brian D. Gallagher, *Esq.* (Briefed)
Marianne Woloschuk, *Esq.* (Argued)
Assistant Attorney General
Office of the Attorney General
590 S. Marine Corps Dr., Ste. 706
Tamuning, GU 96913

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

TORRES, C.J.:

[1] Defendant-Appellant Raymond Tedtaotao Camacho appeals from a final judgment sentencing him to life imprisonment with no possibility of parole for First Degree Criminal Sexual Conduct (As a 1st Degree Felony) (“CSC”) and 25 years imprisonment with no possibility of parole for Kidnapping (As a 2nd Degree Felony) (“Kidnapping”). Camacho argues that the People breached a plea agreement by recommending a sentence of life imprisonment without parole for CSC and that the Superior Court made a “clearly erroneous” interpretation of the Guam Kidnapping statute when arriving at its sentencing decision for Kidnapping. Appellant’s Br. at 7, 10, 11 (July 7, 2015). Camacho requests that his convictions be vacated and the case remanded for resentencing before a different judge.

[2] For the reasons stated herein, we reverse the judgment of the Superior Court, vacate the sentences, and remand for resentencing before the same judge.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] Camacho was indicted by a grand jury for Kidnapping (As a 2nd Degree Felony), First Degree Criminal Sexual Conduct (As a 1st Degree Felony), Second Degree Criminal Sexual Conduct (As a 1st Degree Felony), Assault with Intent to Commit Criminal Sexual Conduct (As a 3rd Degree Felony), Terrorizing (As a 3rd Degree Felony), Second Degree Robbery (As a 2nd Degree Felony), Felonious Restraint (As a 3rd Degree Felony), Identity Theft (As a 3rd Degree Felony), Fraudulent Use of a Credit Card (As a 3rd Degree Felony), Theft (As a 3rd Degree Felony), and Assault (As a Misdemeanor).

[4] Camacho and the People entered into a plea agreement (“Agreement”) in which Camacho pleaded guilty to CSC and Kidnapping. In exchange for his guilty plea, the People agreed to dismiss the remaining charges. The trial court approved the Agreement and sentenced Camacho to life without the possibility of parole for CSC and 25 years without the possibility of parole for Kidnapping.

[5] In the Agreement, the parties agreed to a sentencing range, that Camacho would cooperate with the People in other ongoing cases, and that he would submit to a polygraph test if requested. Paragraph 9(a) of the Agreement provides the following:

The [People] and Defendant agree, in consideration for Defendant’s plea(s) and full cooperation, to the following: That for the First Charge of *Kidnapping (As a 2nd Degree Felony)* . . . the parties shall be free to argue for a period of incarceration between a minimum of fifteen (15) years and a maximum of life . . .

Record on Appeal (“RA”), tab 87 at 5 (Plea Agreement, Mar. 28, 2014).

[6] Paragraph 6, subsections (a) and (b) of the Agreement provide that Camacho “agrees to fully and truthfully cooperate with the [People] and any other government entity lawfully authorized to conduct any inquiry, investigation or proceeding related to the offenses to which Defendant is pleading guilty.” *Id.* at 4.

[7] Camacho expressly agreed to cooperate in the prosecution of Corina Lynn Blas and Raymond Torres Tedtaotao:

The [People] agree[] that if the Court accepts this [Agreement] and sentences [Camacho] in accordance with the provisions contained herein, and after [Camacho] has cooperated fully in the prosecution of the case against his co-actors, CORINA LYNN BLAS and RAYMOND TORRES TEDTAOTAO . . . [the People] will not prosecute [Camacho] for other crimes arising from the facts described in [Camacho’s Police Report].

Id. at 5.

[8] If Camacho failed to cooperate, the People were permitted to move for an expedited sentencing hearing and later charge and prosecute him for the remaining crimes:

If [Camacho] fails to comply with the agreement or departs from Guam the [People] may move for a sentencing hearing to occur within ten (10) days thereafter; and . . . [Camacho] understands and agrees that if he does not cooperate fully with the [People] as detailed herein, that the [People] may later charge and prosecute him for any crimes he may have committed.

Id.

[9] In accordance with the Agreement, Camacho was interviewed by the People's investigator, Jerome R. Lorenzo. Lorenzo created a report of this interview that was referred to at sentencing. Following the interview, the People reached plea agreements with Blas and Tedtaotao in which each pleaded guilty to Identity Theft and Fraudulent Use of a Credit Card.

[10] At sentencing, the trial court considered numerous aggravating factors¹ before arriving at its sentencing decision indicated as the following:

[A]s a result of these findings, [Camacho], the court's going to sentence you, for kidnapping, 25 years, for Criminal Sexual Conduct, as a First Degree Felony, life, without any possibility of parole, or work release, or educational release, and both of them would run concurrent, together.

Transcript ("Tr.") at 45 (Sentencing Hr'g, Jan. 28, 2015).

II. JURISDICTION

[11] This court has jurisdiction over appeals from a final judgment of the trial court pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 114-114 (2015)) and 7 GCA §§ 3107(b) and 3108(a) (2005). This is an appeal of a final judgment entered by the trial court on February 13, 2015.

¹ The trial court considered the following factors: (1) Camacho's conduct caused the harm; (2) Camacho received monetary compensation for the crime; (3) Camacho's lengthy criminal history; (4) the vulnerable nature of the victim; (5) Camacho's participation in a criminal conspiracy; (6) the use of a weapon; (7) the physical restraint of the victim; and (8) the violent nature of the offenses.

III. STANDARD OF REVIEW

[12] When a defendant raises the issue of breach of a plea agreement for the first time on appeal, we must review for plain error. *United States v. Whitney*, 673 F.3d 965, 970 (9th Cir. 2012) (“When a defendant forfeits his claim by failing to make a timely objection, we must review that claim for plain error.” (citation omitted)); *see also Puckett v. United States*, 556 U.S. 129, 134 (2009) (holding that a procedurally forfeited error is subject to plain error review).

[13] We review issues of statutory interpretation *de novo*. *People v. Diaz*, 2007 Guam 3 ¶ 10 (citing *People v. Flores*, 2004 Guam 18 ¶ 8).

[14] “[W]e review the legality of a sentence *de novo*.” *People v. Moses*, 2007 Guam 5 ¶ 10 (citing *United States v. Fine*, 975 F.2d 596, 599 (9th Cir. 1992)).

IV. ANALYSIS

A. Whether the Trial Court Erred by Imposing a Less Favorable Sentence than Permitted by the Agreement for CSC

[15] Camacho argues that the People breached the Agreement by “arguing for a sentence of life in prison without possibility of parole” for the CSC charge. Appellant’s Br. at 7, 11 (July 7, 2015). The People do not specifically address this argument² but argue simply that the trial court agreed with their recommended sentences and that “there is no basis for overturning” Camacho’s convictions. Appellee’s Br. at 20 (Aug. 28, 2015).

[16] The People argue that the issue of whether Camacho complied with the Agreement should not be reviewed because it is a finding of fact made by the trial court. Appellee’s Br. at 13-14. Our standard of review is a threshold issue and, therefore, must be determined prior to consideration of the substantive arguments.

² In his Reply Brief, Camacho correctly argues that the People’s Opposition Brief is generally unresponsive to Camacho’s assignment of error on appeal and fails to address the majority of his arguments. *See generally* Appellant’s Reply Br. (Sept. 2, 2015).

1. Appellate Standard of Review of Agreement

[17] When a guilty plea is obtained in exchange for an agreement by the prosecutor, the agreement must be fulfilled. *Santobello v. New York*, 404 U.S. 257, 262 (1971). It is well-settled law that the issue of whether a plea agreement has been breached is reviewed *de novo*.³ See, e.g., *Whitney*, 673 F.3d at 970 (holding that a defendant’s claim of breach of a plea agreement is generally reviewed *de novo*). However, it is also well-settled that when a defendant raises the issue of breach of a plea agreement for the first time on appeal, we must review for plain error. See *id.* (“When a defendant forfeits his claim by failing to make a timely objection, we must review that claim for plain error.”); *People v. Felder*, 2012 Guam 8 ¶ 13 (noting that “[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the [trial] court.” (alteration in original) (quoting 8 GCA § 130.50(b))); see also *Puckett*, 556 U.S. at 134 (holding that a procedurally forfeited error is subject to plain error review).

[18] “Plain error is highly prejudicial error.” *Felder*, 2012 Guam 8 ¶ 19 (quoting *People v. Quitugua*, 2009 Guam 10 ¶ 11). “Thus, ‘[w]e will not reverse unless (1) there was an error; (2) the error is clear or obvious under current law; (3) the error affected substantial rights; and (4) reversal is necessary to prevent a miscarriage of justice or to maintain the integrity of the judicial process.’” *Id.* (alteration in original) (quoting *Quitugua*, 2009 Guam 10 ¶ 11); see also *United States v. Cannel*, 517 F.3d 1172, 1176 (citing a nearly identical plain error four-part test that is utilized in the Ninth Circuit).

³ For example, this is the unanimous approach adopted by all federal circuit courts of appeal. See *United States v. Almonte-Nunez*, 771 F.3d 84, 89 (1st Cir. 2014); *United States v. Riera*, 298 F.3d 128, 133 (2d Cir. 2002); *United States v. Williams*, 510 F.3d 416, 424 (3d Cir. 2007); *United States v. Miller*, 529 F. App’x 331, 334 (4th Cir. 2013); *United States v. Davis*, 393 F.3d 540, 546 (5th Cir. 2004); *United States v. Smith*, 613 F. App’x 522, 525 (6th Cir. 2015); *United States v. Munoz*, 718 F.3d 726, 729 (7th Cir. 2013); *United States v. Quebedo*, 788 F.3d 768, 775 (8th Cir. 2015); *United States v. Jackson*, 598 F. App’x 570, 572 (10th Cir. 2015); *United States v. Symington*, 781 F.3d 1308, 1312 (11th Cir. 2015); *United States v. Henry*, 758 F.3d 427, 431 (D.C. Cir. 2014).

[19] Camacho did not object to the People's recommendation at sentencing.⁴ We therefore review for plain error.

2. Plain Error Analysis

[20] A plea agreement is a contract between the Government and the defendant, coming as a result of bargaining between the two parties. This type of agreement is regulated by Guam law under 8 GCA § 60.80 (2005). Under this statute, the Government may, in exchange for a plea of guilty, agree to move for dismissal of other charges, or to recommend or not oppose the imposition of a particular sentence, or both. 8 GCA § 60.80(a).

[21] Only the court, however, has the authority to impose a sentence. Therefore, when the Government reaches a plea agreement with a defendant which contemplates entry of a plea of guilty in the expectation that a particular sentence will be imposed, the agreement must be disclosed in open court and the trial court must choose to accept or reject the agreement. *Id.* § 60.80(b).

[22] If the trial court accepts the agreement, it must either inform the defendant that it intends to adopt the terms of the agreement as written or arrive at a disposition more favorable to the defendant than that provided for in the plea agreement. *Id.* § 60.80(c).

[23] If the trial court rejects the plea agreement, then:

[T]he court shall inform the parties of this fact, advise the defendant personally in open court that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw his plea, and advise the defendant that if he persists in his guilty plea or plea of nolo contendere the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

Id. § 60.80(d).

⁴ Camacho's only objection at sentencing was a notice of objection to the filing of the People's Amended Sentencing Memorandum. Tr. at 4 (Sentencing Hr'g). The amended memorandum did not alter the CSC sentence recommendation provided in the People's original Sentencing Memorandum.

[24] Here, the trial court accepted the Agreement between Camacho and the People on April 28, 2014. RA, tab 87 at 9 (Plea Agreement). Pursuant to 8 GCA § 60.80(c), the court was then bound to either adopt the terms of the Agreement or arrive at a disposition that was more favorable to Camacho.

[25] The Agreement set the maximum period of incarceration for CSC as life imprisonment. *Id.* at 5 (“[T]he parties shall be free to argue for a period of incarceration between a minimum of fifteen (15) years and a maximum of life . . .”). Such a sentence carries with it the possibility of parole unless specifically stated otherwise. See 9 GCA § 80.70(a) (2005) (establishing the availability of parole after fulfillment of a specified percentage of a term sentence).

[26] The trial court sentenced Camacho to life without parole for the CSC charge. Tr. at 45 (Sentencing Hr’g); RA, tab 125 at 2 (Judgment, Feb. 13, 2015). Life without the possibility of parole is a disposition less favorable to Camacho than the maximum term provided by the Agreement, which was life with the possibility of parole.⁵ To arrive at such a sentence, the trial court was bound by 8 GCA § 60.80(b) to reject the terms of the Agreement prior to issuing the sentence, inform Camacho that the court was not bound by the Agreement, and give him the opportunity to withdraw his plea pursuant to 8 GCA § 60.80(d).

[27] The trial court failed to undertake this required procedure and therefore erred when sentencing Camacho to life without the possibility of parole, in violation of 8 GCA § 60.80(c) and (d). Having determined that the trial court erred, we must now ascertain whether the error was clear or obvious under current law, whether the error affected Camacho’s substantial rights, and whether reversal is necessary to prevent a miscarriage of justice or to maintain the integrity of the judicial process.

⁵ Here, the Agreement need not expressly include language to create the “possibility of parole” because a sentence is presumed to carry the possibility of parole unless stated otherwise or expressly denied by statute.

[28] The trial court's error was a failure to adhere to the mandatory procedures set out in 8 GCA § 60.80(a)-(d). That error is clear and obvious based on a plain reading of the statute. It is the role of the judiciary to interpret the law, while enactment of those laws is left to the legislature. Failure to properly adhere to the procedural safeguards created by the Guam Legislature also affected Camacho's substantial rights by increasing the length of his sentence beyond that which the People and Camacho agreed to. Imposing a sentence less favorable than the one to which the People and Camacho agreed, without adherence to the statutory procedures made mandatory by the laws of Guam, further threatens the integrity of the judicial process. Camacho is entitled to the protections provided by the laws of Guam. We hold that a failure to adhere to 8 GCA § 60.80(a)-(d) that results in prejudice to a defendant, is plain error.

B. Whether the Trial Court Erred by Imposing a Sentence for Kidnapping Greater than the Maximum Sentence Permitted under the Guam General Sentencing Guidelines

[29] Camacho argues that the trial court made a "clearly erroneous" interpretation of the Guam Kidnapping statute when arriving at its sentencing decision. Appellant's Br. at 10. Camacho asserts 9 GCA § 22.20 (Kidnapping) "only permits denial of parole for the first ten years." *Id.* at 7. Specifically, Camacho points to subsection (b), pertaining to parole terms. *Id.* at 10.

[30] Camacho pleaded guilty and was sentenced to Kidnapping "(As a 2nd Degree Felony)" under 9 GCA § 22.20(a)(2) and (b). See RA, tab 87 at 2 (Plea Agreement); RA, tab 125 at 1, 2 (Judgment). The Guam general sentencing statute, 9 GCA § 80.30(b), states the minimum and maximum terms for a second-degree felony as three and ten years, respectively. 9 GCA § 80.30 (2005) ("Except as otherwise provided by law . . . [i]n the case of a felony of the second degree, the court shall impose a sentence of not less than three (3) years and not more than ten (10) years

. . .”). Therefore, unless specifically altered by law, Kidnapping as a felony of the second degree carries a minimum term of three years and a maximum of ten. See 9 GCA § 80.30.

[31] At sentencing, the trial court stated the following with respect to the Kidnapping sentence:

[Camacho] had pled guilty to the first charge of Kidnapping, as a Second Degree Felony, a violation of 9 GCA, Section 22.20(a)(2) and (b). It says also under our statute that you could go to jail *for a period of ten to 25 years*

Tr. at 42 (Sentencing Hr’g) (emphasis added).

[32] The court then considered the aggravating factors and sentenced Camacho to 25 years without parole. *Id.* at 44; *see also* RA, tab 125 at 2 (Judgment) (“For the First Charge of Kidnapping (As a 2nd Degree Felony), [Camacho] is hereby sentenced to twenty-five (25) years imprisonment at the Department of Corrections, Mangilao, with no possibility of parole[.]”).

[33] The statute cited by the trial court, 9 GCA § 22.20(b), states the following with regard to minimum and maximum terms, and prohibition on parole and work release:

In the case of kidnapping as a *felony of the first degree*, the court shall impose a sentence of imprisonment of a minimum term of ten (10) years and may impose a maximum sentence of up to twenty-five (25) years; said minimum term shall not be suspended nor probation be imposed in lieu of such minimum term nor shall parole or work release be granted before completion of the minimum term.

9 GCA § 22.20(b) (2005) (emphasis added). This language applies by its plain terms only to the charge of Kidnapping as a felony of the first degree. See Appellant’s Br. at 10. Subsection (b) is silent as to Kidnapping as a second-degree felony.⁶

[34] The trial court’s application of the 25-year maximum sentence found in 9 GCA § 22.20(b) was error. Title 9 GCA § 22.20(b) does not provide a potential “ten to 25 years” for a

⁶ Camacho fails to make this argument in his brief. He instead misread 9 GCA § 22.20(b) as “only permit[ting] denial of parole for the first ten years.” Appellant’s Br. at 7. Title 9 GCA § 80.30(b), however, does not apply to Kidnapping as a second-degree felony.

second-degree felony charge.⁷ Tr. at 42 (Sentencing Hr'g). Because the statute is silent on sentencing for Kidnapping as a second-degree felony, the general sentencing guidelines control the sentencing range available to the court.⁸

[35] The general sentencing statute, 9 GCA § 80.30(b), provides a sentencing range of three to ten years for a second-degree felony. Therefore, because Camacho pleaded guilty to Kidnapping as a second degree felony, the trial court improperly sentenced Camacho to a term in excess of that permitted by statute for his crime.

[36] The People appear to have recognized this problem prior to sentencing. After initially recommending a sentence of 25 years without parole for the Kidnapping charge, the People amended their recommendation to a sentence of 10 years with parole, consistent with the general sentencing guidelines. Compare RA, tab 119 at 3 (People's Sentencing Mem., Jan. 14, 2015), with RA, tab 121 at 4 (People's Sentencing Am. Mem., Jan. 26, 2015). This was also reflected during sentencing, when the People again recommended a maximum penalty of only ten years. See Tr. at 35 (Sentencing Hr'g). The trial court ignored the People's attempt to cure the flawed recommendation, and neither party raised this issue in its appellate brief.

[37] Generally, we will review “only issues which are argued specifically and distinctly” within the parties' initial briefs. *Guam Greyhound, Inc. v. Brizill*, 2008 Guam 13 ¶ 7 n.3 (quoting *Greenwood v. Fed. Aviation Admin.*, 28 F.3d 971, 977 (9th Cir. 1994)); see also Guam

⁷ The terms of the Agreement itself include a similarly flawed interpretation of 9 GCA § 22.20(b): “The first charge of Kidnapping (*As a 2nd Degree Felony*), in violation of 9 GCA § 22.20(a)(2) and (b), which carries a sentence of imprisonment of a *minimum term of ten (10) years* and may impose a *maximum sentence of up to twenty-five (25) years . . .*” RA, tab 87 at 2 (Plea Agreement) (original emphasis removed) (new emphasis added).

⁸ The error of the parties when citing to 9 GCA § 22.20(b) may not be enforced in contravention of Guam law. See *Pangelinan v. Camacho*, 2008 Guam 4 (stating our rule that when an illegal contract provision is not integral to the purpose of the contract, it may be severed from the agreement).

R. App. P. 13(a)(9)(A) (“[A]rgument . . . must contain . . . appellant’s contentions and the reasons for them, with citations to the authorities . . . on which the appellant relies . . .”).

[38] However, we have previously stated that “[i]t is plain error to sentence a defendant to a term that exceeds the statutory maximum.” *Moses*, 2007 Guam 5 ¶ 53 (citing *United States v. Guzman-Bruno*, 27 F.3d 420, 423 (9th Cir. 1994)). Guam law also provides that the trial court may retroactively “correct an illegal sentence at any time.” *Id.* ¶ 54 (citing 8 GCA § 120.46 (2005)). Therefore, we exercise our discretion to find an illegal sentence despite the fact that Camacho did not specifically raise this aspect of the sentence when he argued this was an illegal sentence in his briefs.

[39] We hold that the trial court erred by imposing a sentence for Kidnapping greater than the maximum permitted under the Guam general sentencing guidelines. Because a 25-year sentence for Kidnapping (As a 2nd Degree Felony) is illegal, Camacho’s sentence must be remanded to the trial court for resentencing pursuant to the general sentencing guidelines found under 9 GCA § 80.30(b). *See id.*

C. Whether Camacho is Entitled to Resentencing before a Different Judge on Remand

[40] Camacho argues that the appropriate remedy for the errors committed below is a remand for resentencing before a different judge. Appellant’s Br. at 13. However, “[r]emand to a new judge is reserved for ‘unusual circumstances.’” *United States v. Paul*, 561 F.3d 970, 975 (9th Cir. 2009) (quoting *United States v. Arnett*, 628 F.2d 1162, 1165 (9th Cir. 1979)).

[41] The Ninth Circuit has enumerated the following test for determining whether circumstances are “unusual”:

To determine whether “unusual circumstances” exist, the court considers: (1) whether the original judge would reasonably be expected upon remand to have substantial difficulty in putting out of his or her mind previously expressed views or findings determined to be erroneous or based on evidence that must be rejected,

- (2) whether reassignment is advisable to preserve the appearance of justice, and
(3) whether reassignment would entail waste and duplication out of proportion to any gain in preserving the appearance of fairness.

Id. at 975 (citing *Smith v. Mulvaney*, 827 F.2d 558, 562-63 (9th Cir. 1987)).

[42] There is no reason to suggest that the trial court judge will not sentence Camacho to proper and legal sentences based upon the mandate or that the “appearance of justice” will not be maintained. Under the particular facts of this case, reassignment would entail waste and duplication out of proportion to any gain.

[43] We hold that while Camacho is entitled to resentencing, he is not entitled to resentencing before a different judge because reassignment is unnecessary under the facts of his case.

V. CONCLUSION

[44] Because the trial court imposed a sentence for CSC less favorable to Camacho than the maximum sentence permitted by the Agreement, we **VACATE** and **REMAND** the sentence to the Superior Court for resentencing not inconsistent with this opinion.

[45] Since the Superior Court imposed a sentence for Kidnapping greater than the maximum sentence permitted under the Guam general sentencing guidelines, 9 GCA § 80.30(b), we **VACATE** and **REMAND** the sentence to the Superior Court for resentencing not inconsistent with this opinion.

/s/

F. PHILIP CARBULLIDO
Associate Justice

/s/

KATHERINE A. MARAMAN
Associate Justice

/s/

ROBERT J. TORRES
Chief Justice