



Filed

Supreme Court of Guam, Clerk of Court

IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

NICHOLAS JONOVAEN CRUZ GUERRERO,
Defendant-Appellant.

Supreme Court Case No.: CRA16-007
Superior Court Case No.: CF0440-14

OPINION

Cite as: 2017 Guam 5

Appeal from the Superior Court of Guam
Argued and submitted on March 1, 2017
Hagåtña, Guam

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

MARAMAN, C.J.:

[1] Defendant-Appellant Nicolas Jonovaen Cruz Guerrero was convicted of one count of Possession with Intent to Deliver a Schedule One Controlled Substance (as a First Degree Felony) and one count of Possession of a Schedule One Controlled Substance (as a Violation). Guerrero argues on appeal that the trial court erred in failing to dismiss the indictment based upon an alleged violation of Guam’s speedy trial statute, 8 GCA § 80.60. For the reasons set forth below, we affirm Guerrero’s conviction.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] Guerrero was indicted on August 22, 2014 on two counts related to his possession of marijuana. Following his initial appearance, Guerrero was released pursuant to an Order of Conditional Release and Appearance Bond, dated September 17, 2014.

[3] One week after the Order of Conditional Release was filed, the trial court issued an Order pursuant to Public Law 29-56 that set an initial trial date of October 14, 2014. That same day, Guerrero appeared before the Superior Court for his arraignment. During this hearing, counsel for Guerrero stated the following: “On Mr. Guerrero’s behalf, I acknowledge of [sic] receipt of the indictment in this case. . . . At this point, Your Honor, [Guerrero] is waiving his right to a speedy trial.” Transcript (“Tr.”) at 2 (Arraignment Hr’g, Sept. 24, 2014). In response, the trial court stated, “Mr. Guerrero, the court records, sir, will show that you are . . . waiving your right to a speedy trial” *Id.* Guerrero said nothing in response.

[4] In addition to this oral waiver of rights made by his attorney during his arraignment, Guerrero filed a document in the Superior Court entitled “Assertion or Waiver of Speedy Trial and Request for Jury of Twelve in Felony Case.” Record on Appeal (“RA”), tab 10 (Assertion or Waiver of Speedy Trial, Sept. 24, 2014). In that document, Guerrero agreed as follows:

Upon being fully advised by my counsel of my right to a speedy trial, I, NICHOLAS JONOVEAN CRUZ GUERRERO, being the defendant in the above-styled action, do hereby: . . . Waive my right to a speedy trial, pursuant to 8 G.C.A. [sic], Section 80.60 and the 6th Amendment until written notice is subsequently filed in Court asserting my right to a speedy trial. This waiver tolls the speedy trial clock[.] My reassertion of right to a speedy trial will begin to count on the date of the filing of my written notice of reassertion of speedy trial.

Id. at 1. This document was signed and dated by Guerrero.

[5] Several months later, the court issued a Criminal Trial Scheduling Order. This order indicated that Guerrero had waived his rights to a speedy trial. There is no evidence in the record that Guerrero objected to this order. Trial was set to occur on April 20, 2015.

[6] Following a change of counsel—and just six days before Guerrero’s trial was set to begin—Guerrero moved to dismiss the indictment on the basis that “the trial of Defendant, who was not in custody at the time of his arraignment, was not commenced within 60 days after his arraignment” RA, tab 27 at 1 (Mot. to Dismiss Indictment, Apr. 14, 2015). Guerrero argued, among other things, that he did not understand his rights when his original attorney waived them during his arraignment. Guerrero provided no factual or evidentiary support for this position. The People opposed Guerrero’s motion, arguing that Guerrero had sufficiently waived his rights to a speedy trial, both at oral argument and in writing. Moreover, the People argued that any delay was caused by Guerrero himself, and therefore the motion should be

denied under the good cause standard expressed in *People v. Flores*, 2009 Guam 22. Guerrero submitted no reply.

[7] The trial court heard argument less than three weeks after the People filed its opposition brief. At the close of this hearing, the trial court denied Guerrero’s motion.

[8] The trial court issued a written Decision and Order on Guerrero’s motion to dismiss on August 12, 2015. The trial court held that Guerrero had waived his right to a speedy trial on at least two occasions—orally in front of the court via his attorney and, separately, in a written filing. Moreover, any delay in bringing Guerrero to trial was a result of his and his prior attorney’s conduct, and the good cause exception under 8 GCA § 80.60(b)(3)(a) therefore applied. On these bases, the trial court denied Guerrero’s motion.

[9] Jury selection began on March 17, 2016. Guerrero was ultimately convicted at trial. This appeal was timely filed.

III. JURISDICTION

[10] This court has jurisdiction over appeals from a final judgment of conviction rendered in the Superior Court of Guam. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 115-40 (2017)); 7 GCA §§ 3107(b), 3108(a) (2005); 8 GCA §§ 130.10, 130.15(a) (2005).

IV. STANDARD OF REVIEW

[11] “A trial court’s denial of a defendant’s motion to dismiss on statutory speedy trial grounds is reviewed for an abuse of discretion.” *People v. Flores*, 2009 Guam 22 ¶ 9; *see also Nicholson v. Superior Court of Guam (People)*, 2007 Guam 9 ¶ 8 (citation omitted). Issues of statutory interpretation, however, are reviewed *de novo*. *See People v. Rios*, 2008 Guam 22 ¶ 8 (citation omitted).

IV. ANALYSIS

[12] Guerrero argues on appeal that the indictment against him should have been dismissed pursuant to 8 GCA § 80.60(a) because he was not brought to trial within 60 days from the date of his arraignment.¹ Appellant's Br. at 9-11 (Nov. 22, 2016). The People argue in opposition that "Guerrero ignores the import of the speedy trial waiver form" signed by Guerrero and his attorney's oral waiver of rights at Guerrero's initial arraignment. Appellee's Br. at 4 (Dec. 7, 2016). Moreover, the People argue that even if Guerrero's waiver of his speedy trial rights is for some reason invalid, any delay in bringing Guerrero to trial is a result of his misleading the court and the parties into believing that he had waived those rights. *Id.* at 8. Accordingly, the good cause provision of 8 GCA § 80.60(b)(3) should apply to deny Guerrero relief from prosecution. As the court explains below, the trial court had good cause pursuant to 8 GCA § 80.60(b)(3) to delay Guerrero's trial based upon the oral waiver of rights that Guerrero gave during his arraignment. Thus, the trial court properly denied Guerrero's motion to dismiss the indictment.

[13] Pursuant to Guam's speedy trial statute, "[e]xcept as otherwise provided in Subsection (b), the court shall dismiss a criminal action if: . . . (3) The trial of a defendant, who is not in custody at the time of his arraignment, has not commenced within (60) sixty days after his arraignment." 8 GCA § 80.60(a)(3) (2005). Dismissal is mandatory under this provision when a defendant is not brought to trial within the appropriate timeframe and none of the provisions in subsection (b) apply. *See Flores*, 2009 Guam 22 ¶ 23 ("If a defendant is not brought to trial

¹ Guerrero bases his appeal entirely upon Guam's speedy trial statute, 8 GCA § 80.60—not the Sixth Amendment to the United States Constitution as applied in Guam. *See* Appellant's Br. at 2 (stating the only issue presented for review is: "Does 8 GCA § 80.60(a)(3) . . . mean what it says?"). Accordingly, the court does not address any Sixth Amendment issues in this Opinion. *See People v. Naich*, 2013 Guam 7 ¶ 48 (considering only constitutional speedy trial claim and refusing to consider statutory speedy trial claim that was not "clearly raised"); *see also People v. Julian*, 2012 Guam 26 ¶ 19 ("[C]onstitutional standards and analysis have no application when the question is whether the defendant has been denied a statutory speedy trial right . . ." (citation omitted)).

within the time prescribed and no good cause is shown, the trial court must dismiss the indictment.” (citing 8 GCA § 80.60)).

[14] Subsection (b), however, “sets forth exceptions whereby a court is permitted to set the trial beyond the 60-day period.” *Ungacta v. Superior Court of Guam (People)*, 2013 Guam 29 ¶ 9 (citing 8 GCA § 80.60(b)). As relevant to this appeal, subsection (b) to 8 GCA § 80.60 provides that “[a] criminal action shall not be dismissed pursuant to Subsection (a) if: . . . (3) Good cause is shown for the failure to commence the trial within the prescribed period.” 8 GCA § 80.60(b)(3).

[15] This court has never explicitly addressed the import of an express waiver of unlimited duration on a criminal defendant’s statutory speedy trial rights.² In one recent case, however, we stated that the speedy trial clock “stop[s]” when a defendant waives his or her statutory right to a speedy trial. *Ungacta*, 2013 Guam 29 ¶ 27. While the *Ungacta* decision did not explicitly discuss what provision of subsection (b) applied—i.e., whether waiver constitutes “express consent” under subsection (b)(1) or good cause under subsection (b)(3)—the import of this statement is clear: an express waiver tolls the counting of the statutory 60-day window.

[16] “Under 8 GCA § 80.60, the term good cause is not statutorily defined. Rather, good cause is defined through case law and determined by the facts and circumstances of each case.”

² The parties dispute whether Guerrero’s oral and written waivers each separately constitute “express consent” under the provision of 8 GCA § 80.60(b)(1). Both sides agreed at oral argument that a distinction exists between “express consent” and an “express waiver.” See generally *Mitchell v. Virginia*, 518 S.E.2d 330, 334 (Va. Ct. App. 1999) (“A continuance has the effect of excluding the time for the delay from the period attributable to the Commonwealth[.] . . . [a] waiver . . . foregoes the accused’s right to assert the speedy trial statute as a bar to prosecution notwithstanding the effect of the statute.” (citations omitted)). This raises the question of whether a date certain for trial is necessary for any continuance to fall under the “express consent” provisions of § 80.60(a)(1). See 8 GCA § 80.60(b)(1); see also *Mathews v. Superior Court (People)*, 110 Cal. Rptr. 843, 849 (Cal. App. Ct. 1973) (holding under the pre-amendment California analog to § 80.60(b)(1) that consent of indefinite duration was “ineffective” if no date certain is set for trial). Because this court finds that good cause existed under 8 GCA § 80.60(b)(3), we need not and do not address this issue today.

Julian, 2012 Guam 26 ¶ 21 (citations omitted). “What constitutes good cause for the delay of a criminal trial is a matter that lies within the discretion of the trial court.” *Flores*, 2009 Guam 22 ¶ 32 (quoting *California v. Johnson*, 606 P.2d 738, 746 (Cal. 1980)). “This discretion is abused only when an allowance of delay ‘exceeds the bounds of reason, all of the circumstances before it being considered.’” *People v. Mendiola*, 2015 Guam 26 ¶ 29 (quoting *People v. Palomo*, No. DCA 91-00061A, 1993 WL 129624, at *8 (D. Guam App. Div. Apr. 8, 1993), *aff’d sub nom.*, 35 F.3d 368 (9th Cir. 1994), *as amended* (July 19, 1994)).

[17] A determination of whether good cause exists under 8 GCA § 80.60(b)(3) “depends on the facts and circumstances of each case” *Nicholson*, 2007 Guam 9 ¶ 13 (citation omitted); *see also Quinata*, 2010 Guam 8 ¶ 36 (citation omitted). But, generally speaking, delay that is “caused by the conduct of the defendant” or intended “for the defendant’s benefit” constitutes good cause. *Flores*, 2009 Guam 22 ¶ 32 (citing *Johnson*, 606 P.2d at 746); *People v. Ibanez*, DCA 91-0001A, 1992 WL 97221, at * 2 (D. Guam App. Div. Apr. 16, 1992); *see also Carver v. Superior Court of Guam (People)*, 1998 Guam 23 ¶¶ 14-16. Similarly, “delay arising from unforeseen circumstances” may justify the invocation of subsection (b)(3). *Flores*, 2009 Guam 22 ¶ 32 (quoting *Johnson*, 606 P.2d at 746).

[18] In rejecting Guerrero’s motion, the trial court held that “any delay in this case was the result of the Defendant’s prior counsel[’s], the People[’s], and the Court’s reliance on the waiver form . . . executed by Defendant. Without an execution of the waiver form, the Court would have proceeded normally under the timeframe prescribed under 8 GCA [§] 80.60(a)(3).” RA, tab 33 at 4 (Dec. & Order, Aug. 12, 2015). On this basis, the trial court held that there existed good cause to deny Guerrero’s motion. *Id.* We find no reason to doubt that the trial court would

have brought Guerrero's case to trial within the required 60-day window were it not for Guerrero purporting to waive his statutory speedy trial rights. The trial court filed an Order pursuant to Public Law 29-56 on September 24, 2014 that set an initial trial date of October 14, 2014. See RA, tab 11 (Order (Pub. L. 29-56), Sept. 24, 2014). This date fell within the 60-day statutory window under 8 GCA § 80.60(a)(3). Ultimately, this date was delayed after Guerrero orally purported to waive his statutory speedy trial rights at his arraignment. The record is devoid of any facts indicating the underlying reasons for this waiver. In the absence of any countervailing evidence, it was reasonable for the trial court to conclude that this oral waiver was valid and intended to benefit the defendant.³

[19] In an analogous case, *People v. Taman*, this court addressed whether voluntary consent to be detained could toll the fifteen-minute period of detainment provided for by 8 GCA § 30.30. 2013 Guam 22. In holding that voluntary consent to tolling was permitted despite language in the statute that seemed to indicate the fifteen-minute period was “unconditional,” *id.* ¶ 12 (citation omitted), the court stated that to rule otherwise would “lead to pragmatic quagmires and absurdities” by allowing a suspect to “strategically prolong an investigative detention beyond fifteen minutes to avoid arrest,” *id.* ¶ 15. The rationale for our decision in *Taman* applies with equal force on the facts presented here; “pragmatic quagmires and absurdities” would result if a

³ Guerrero also argues that the written waiver of statutory speedy trial rights he filed in the Superior Court was ineffective because it was premised on the false assumption that these rights could be “reasserted.” See RA, tab 10 at 1 (Assertion or Waiver of Speedy Trial). Initially, we note that Guerrero never attempted to “reassert” his statutory speedy trial rights in the court below. In any event, our case law makes clear that the focus of the good cause analysis under section 80.60(b)(3) is whether the trial court's decision to continue a trial until a date outside the statutory window “exceeds the bounds of reason, all of the circumstances before it being considered.” *Mendiola*, 2015 Guam 26 ¶ 29 (quoting *Palomo*, 1993 WL 129624, at *8). Regardless of whether Guerrero's written waiver was for some reason defective, we cannot say that the trial court acted outside the bounds of reason in relying on Guerrero's purported oral waiver made during his arraignment. The court therefore need not address whether Guerrero's written waiver was invalid for the reasons he posits on appeal. We leave for another day the question of whether a party who has waived their statutory speedy trial rights for a period of unlimited duration may subsequently reassert those rights.

defendant was permitted to indicate his agreement that the speedy-trial clock has stopped running and then attempt to take advantage of the unwitting prosecution when the clock has run. *See id.* Because Guerrero expressly purported to waive his statutory speedy trial rights at his arraignment and the trial court relied upon this representation, any fault for failing to bring Guerrero to trial within 60 days from his arraignment must be borne by Guerrero himself—not the prosecution or the trial court. Good cause therefore existed to delay Guerrero’s trial, and the trial court properly denied his motion to dismiss.

V. CONCLUSION

[20] For the reasons set forth above, the trial court’s denial of Guerrero’s motion to dismiss and the Judgment of Conviction dated July 29, 2016 are **AFFIRMED**.

/s/

F. PHILIP CARBULLIDO
Associate Justice

/s/

ROBERT J. TORRES
Associate Justice

/s/

KATHERINE A. MARAMAN
Chief Justice