



Filed

Supreme Court of Guam, Clerk of Court

IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

MICHAEL SUNG HO ROBERSON,
Defendant-Appellant.

Supreme Court Case No.: CRA17-001
Superior Court Case No.: CF0269-16

OPINION

Cite as: 2017 Guam 18

Appeal from the Superior Court of Guam
Argued and submitted on July 13, 2017
Hagåtña, Guam

Appearing for Defendant-Appellant:
Howard Trapp, *Esq.*
Howard Trapp, Inc.
200 Saylor Bldg.
139 E. Chalan Santo Papa
Hagåtña, GU 96910

Appearing for Plaintiff-Appellee:
James Collins, *Esq.*
Office of the Attorney General
Prosecution Division
590 S. Marine Corps Dr., Ste. 706
Tamuning, GU 96913

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

TORRES, J.:

[1] Prior to trial, Defendant-Appellant Michael Sung Ho Roberson (“Roberson”) did not file a motion to suppress any evidence that resulted from his traffic stop for an expired vehicle registration. At trial, he took the stand to testify about the stop. He was ultimately convicted by a jury for three separate charges of possession of illegal substances. On appeal, Roberson argues that his defense counsel provided ineffective assistance by not moving to suppress the evidence before trial and for other undeveloped reasons. For the reasons herein, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] Roberson was stopped by Guam Police Department (“GPD”) Officer Eric Asanoma after Asanoma noticed Roberson’s vehicle registration was expired. During the stop, Asanoma observed a Ziploc bag of pills on the driver-side floor of the vehicle. Asanoma also observed a strong odor of marijuana coming from the vehicle. Eventually, other GPD officers arrived at the scene, detained Roberson by cuffing him a short distance away from his vehicle, conducted a search of the passenger cab of the vehicle, and ultimately found a partially-burned marijuana cigarette, a Ziploc bag containing Xanax pills, and a prescription bottle containing codeine-based pills. The label on the prescription bottle indicated that it did not belong to Roberson but to a person named George Muna Cruz (“Cruz”).

[3] During Roberson’s jury trial, the People presented witness testimony from the GPD officers present during Roberson’s traffic stop and eventual arrest, as well as from those who took part in the investigation. Testimony was also taken from Cruz, the owner listed on the label of the prescription bottle found in Roberson’s vehicle, as well as other witnesses who were

familiar with Roberson and Cruz's history of mental and physical health. Roberson testified as the only witness on his behalf and offered his account of the incident.

[4] Of the six charges filed against him, he was convicted of three: (i) Possession of a Schedule III Controlled Substance as a third-degree felony; (ii) Possession of a Schedule IV Controlled Substance as a third-degree felony; and (iii) Possession of Less than One Ounce of Marijuana as a violation. Roberson timely filed an appeal.

II. JURISDICTION

[5] This court has jurisdiction over this case pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 115-84 (2017)); 7 GCA §§ 3107 and 3108(a) (2005); and 8 GCA § 130.15(a) (2005).

III. STANDARD OF REVIEW

[6] “Ineffective assistance of counsel claims are questions of law[,] which this court reviews *de novo*.” *People v. Damian*, 2016 Guam 8 ¶ 11 (quoting *People v. Moses*, 2007 Guam 5 ¶ 9) (internal quotation marks omitted).

IV. ANALYSIS

[7] Roberson argues on appeal that he was deprived of a fair trial because defense counsel only offered Roberson's testimony that the “government's evidence was obtained in violation of Roberson's rights, instead of moving [pre-trial] that the evidence obtained in violation of Roberson's rights be suppressed.” Appellant's Br. at 14 (May 17, 2017). Roberson cites solely to an excerpt from 8 GCA § 65.15 as authoritative support for his argument, *see id.* at 15, which states in relevant part: “The following shall be raised prior to trial . . . (c) Motions to suppress evidence,” 8 GCA § 65.15(c) (2005).

[8] This court employs the *Strickland* two-part test established by the United States Supreme Court to determine whether a defendant was deprived of the effective assistance of counsel. See *People v. Katzuta*, 2016 Guam 25 ¶ 83 (citations omitted); see also *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Counsel’s competence is presumed, *Kimmelman v. Morrison*, 477 U.S. 365, 384 (1986), and under *Strickland*, to rebut the presumption of competence, a defendant must prove that: “(1) trial counsel’s performance was deficient so as to fall below the prevailing professional norms; and (2) the deficient performance prejudiced the defendant so as to deprive him of a fair trial,” *Katzuta*, 2016 Guam 25 ¶ 83 (citing *Strickland*, 466 U.S. at 687, 694). “In order to prevail, [a defendant] would need to establish that the decisions about which he complains were not made for strategic purposes but out of a lack of diligence or for some illegitimate motive.” *Damian*, 2016 Guam 8 ¶ 31. “This court has also required that the ‘record [be] sufficiently complete to make a proper finding’ in order to review such a claim.” *People v. Pablo*, 2016 Guam 11 ¶ 12 (alteration in original) (quoting *People v. Ueki*, 1999 Guam 4 ¶ 5).

[9] In *Kimmelman*, the United States Supreme Court recognized that counsel’s failure to properly raise a Fourth Amendment claim prior to trial may serve as a valid basis for an ineffective assistance of counsel claim under the Sixth Amendment. See 477 U.S. at 382-83. There, the Court agreed that a “failure to file a suppression motion does not constitute *per se* ineffective assistance of counsel.” *Id.* at 384. Also in *Kimmelman*, the Court held that where defense counsel’s failure to litigate a Fourth Amendment claim is the principal allegation of ineffectiveness, “the defendant must also prove that his Fourth Amendment claim is meritorious and that there is a reasonable probability that the verdict would have been different absent the excludable evidence in order to demonstrate actual prejudice.” *Id.* at 375.

[10] On appeal, Roberson did not raise the merits of a Fourth Amendment claim in his brief; he raised it for the first time at oral arguments. This court has held that an appellant's failure to develop his argument in his brief results in an abandonment of the issue for purposes of appeal. See, e.g., *People v. Blas*, 2015 Guam 30 ¶¶ 27-28. "Pursuant to the Guam Rules of Appellate Procedure ('GRAP'), an Appellant's brief must contain an argument, which must state the 'Appellant's contentions and [the] reasons for them' with citations to authorities and the record." *Id.* ¶ 28 (quoting Guam R. App. P. 13(a)(9)(A)). If a litigant fails to comply with this Rule, the issue will be deemed abandoned unless a failure to review the merits would result in manifest injustice. *Id.* (quoting *People v. Quinata*, 1999 Guam 6 ¶ 26) (citing *United States v. Turner*, 898 F.2d 705, 712 (9th Cir. 1990)). Here, by not raising the issue in his brief, Roberson effectively abandoned for purposes of this appeal his ineffective assistance claim that is based upon his trial counsel's failure to seek suppression under the Fourth Amendment. Therefore, as a result of his abandonment of the issue, we find that Roberson has not met his burden to demonstrate actual prejudice. See *Kimmelman*, 477 U.S. at 375; see also Guam R. App. P. 13(a)(9)(A); *Blas*, 2015 Guam 30 ¶ 28.

[11] In addition to his argument regarding his trial counsel's failure to move properly pre-trial to suppress under the Fourth Amendment, Roberson attempted to clarify during oral argument that his brief also alleged that his trial counsel's decision to place Roberson on the stand, in and of itself, amounted to ineffective assistance. Roberson does not develop any argument to show how his defense counsel's performance was deficient as to fall below the prevailing professional norms. See *Katzuta*, 2016 Guam 25 ¶ 83 (citing *Strickland*, 466 U.S. at 687, 694). In particular, the record on appeal is not sufficient to shed light on whether Roberson's defense counsel's decisions were made for strategic purposes or not. Thus, the record is not sufficiently complete

to make a proper finding on direct appeal on Roberson’s other ineffective assistance claims to the extent that they were raised on appeal. *See Damian*, 2016 Guam 8 ¶ 31. We decline to reach the merits of these additional arguments, as such claims are “more appropriately addressed in a habeas corpus proceeding because it requires an evidentiary inquiry beyond the official record.” *People v. Guerrero*, 2017 Guam 4 ¶ 60 (citation omitted).

V. CONCLUSION

[12] For the reasons set forth above, we find that Roberson did not raise the merits of the Fourth Amendment claim in his appellate brief. Therefore, Roberson abandoned the argument that he was deprived of effective assistance of counsel due to his trial counsel’s failure to properly raise a Fourth Amendment claim before trial and has not established the prejudice prong of *Strickland*. The record is not sufficiently developed to address Roberson’s other claims of ineffective assistance. Accordingly, we **AFFIRM** the trial court’s judgment.

/s/

F. PHILIP CARBULLIDO
Associate Justice

/s/

ROBERT J. TORRES
Associate Justice

/s/

KATHERINE A. MARAMAN
Chief Justice