IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

DAVID Q. MANILA,
Defendant-Appellant,

ANTHONY T. QUENGA and SONG JA CHA,
Defendants.

Supreme Court Case No.: CRA17-005
Superior Court Case No.: CF0020-08

OPINION

Cite as: 2018 Guam 24

Appeal from the Superior Court of Guam
Argued and submitted on October 18, 2017
Hagåtña, Guam

Appearing for Defendant-Appellant:
Terence E. Timblin, *Esq.*
One Agana Bay
446 E. Marine Corps Dr., Ste. 201
Hagåtña, Guam 96910

Appearing for Plaintiff-Appellee:
Marianne Woloschuk, *Esq.*
Assistant Attorney General
Office of the Attorney General
590 S. Marine Corps Dr., Ste. 706
Tamuning, Guam 96913

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

MARAMAN, C.J.:

[1] Defendant-Appellant David Q. Manila appeals from a final judgment of conviction. Previously, Manila appealed multiple convictions related to conspiracy, kidnapping, prostitution, and criminal sexual conduct ("CSC"), as described in *People v. Manila*, 2015 Guam 40 ("*Manila I*").[1] For the reasons set forth in *Manila I*, we vacated certain convictions while affirming others and remanded the case. For the reasons set forth below, we affirm the amended judgment entered by the trial court on remand.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] The issues in this appeal relate solely to sentencing. After a jury convicted Manila of multiple crimes, the trial court initially sentenced Manila to two concurrent thirty-year terms of imprisonment for two first-degree CSC convictions, to run concurrently with shorter sentences for other convictions. Because we determined on appeal that several of the charges on which Manila was convicted at trial required reversal, we remanded the case with directions to the trial court "to vacate the improper convictions and resentence." *Manila I*, 2015 Guam 40 ¶ 66.

[3] On remand, the trial court received multiple sentencing memoranda from Manila and the People. Initially, Manila requested that his thirty-year sentence for the upheld count of first-degree CSC be reduced to the statutory minimum of fifteen years because, according to Manila, "the only rational interpretation" of this court's language in *Manila I* is "that the sentence should be *reduced*." Record on Appeal ("RA"), tab 1008 at 2 (Manila's Suppl. Sentencing Mem., Feb.

[1] Manila asks this court to take judicial notice of the proceedings in his prior appeal. Appellant's Br. at 2 (July 31, 2017). We grant the request and take notice of the proceedings and the record before us in the appeal resolved by our opinion issued in *Manila I*, 2015 Guam 40. *See* Guam R. Evid. 201; *see also In re N.A.*, 2001 Guam 7 ¶ 58 ("It is proper to take judicial notice of court files.").

2, 2016); *see also* 9 GCA § 25.15(b) (2005) ("Any person convicted of [first-degree CSC] shall be sentenced to a minimum of fifteen (15) years imprisonment. . . ."). Manila then modified this argument by asserting a further reduction *below* the fifteen-year minimum was warranted pursuant to 9 GCA §§ 80.39 and 80.39.1 (also known as the "Justice Safety Valve Act of 2013"). Manila argued a fifteen-year sentence would "result in substantial injustice," in part because of the "relatively incidental nature of his involvement with the events that transpired." *See* RA, tab 1034 at 2-3 (Manila's Mem. Supp. Mot. Apply 9 GCA § 80.39; Reply to Gov't's Resp. Mot., Mar. 30, 2017); *see also* 9 GCA § 80.39.1(a) (added by P.L. 33-022:2 (May 7, 2015)). Because 9 GCA § 80.39.1(b) authorizes departure from the mandatory minimum sentence only when it is "not necessary for the protection of the public," 9 GCA § 80.39.1(b), Manila also claimed "the sheer randomness of his involvement" meant he was unlikely to repeat any of the crimes, RA, tab 1034 at 3 (Manila's Mem. Supp. Mot. Apply 9 GCA § 80.39; Reply to Gov't's Resp. Mot.).

[4] The People countered by asserting that a thirty-year sentence fell within the statutory range and that Manila could have been sentenced to life imprisonment. *See, e.g.*, RA, tab 1026 at 2-3 (People's Am. Suppl. Sentencing Mem., Mar. 23, 2017); *see also* 9 GCA § 25.15(b) (mandating range of fifteen years to life imprisonment without parole). The People also contended that the violent nature of the first-degree CSC conviction we affirmed in *Manila I* weighed in favor of maintaining the same thirty-year sentence originally imposed by the trial court for that count. The People opposed the application of 9 GCA § 80.39.1 because Manila's upheld convictions were not just for a single crime, but multiple crimes spanning years; his chances of rehabilitation were not compelling; and a thirty-year sentence did not result in substantial injustice. Finally, the People argued Manila was a "leader, manager, or supervisor of others in a continuing criminal enterprise," and therefore the exception in 9 GCA § 80.39.2(c)

barred the application of the safety valve. RA, tab 1033 at 5-6 (People's Resp. Suppl. Sentencing Mem. Re: 9 GCA § 80.39, Mar. 29, 2017); *see also* 9 GCA § 80.39.2(c) (added by P.L. 33-022:2 (May 7, 2015)).

[5] The trial court held a hearing on Manila's section 80.39 motion. Thereafter, in a written Decision and Order, the trial court denied Manila's motion "[i]n the interest of protecting the public," reasoning that the Guam Legislature "made it abundantly clear that the Justice Safety Valve Act of 2013 was *not* intended for violent offenses," including first-degree CSC that included an element of force or coercion. RA, tab 1045 at 5-6 (Dec. & Order, Apr. 10, 2017). The trial court found that the imposition of the mandatory minimum sentence was necessary to protect the public, *see id.*, therefore it did not reach the issue of whether Manila was a "leader" of a "continuing criminal enterprise," *see* 9 GCA § 80.39.2(c). A sentencing hearing was subsequently held, in which the trial court gave the parties an opportunity to present argument with respect to sentencing. The trial court re-sentenced Manila to thirty years of imprisonment for the affirmed count of first-degree CSC, with the possibility of parole and credit for time served, to be served concurrently with his other affirmed convictions. Manila timely appealed.

II. JURISDICTION

[6] This court has jurisdiction over an appeal from a final judgment of conviction pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 115-231 (2018)), 7 GCA §§ 3107(b) and 3108(a) (2005), and 8 GCA §§ 130.10 and 130.15(a) (2005).

III. STANDARD OF REVIEW

[7] "The imposition of a sentence by the trial court is reviewed for an abuse of discretion." *People v. Manibusan*, 2016 Guam 40 ¶ 12 (quoting *People v. Joshua*, 2015 Guam 32 ¶ 20). "An abuse of discretion results where the sentence 'is based on an erroneous conclusion of law or

where the record contains no evidence on which the judge could have rationally based the decision.'" *Id.* (quoting *Joshua*, 2015 Guam 32 ¶ 33). "Reviewing the imposed sentencing terms also requires statutory interpretation which we review *de novo*." *Id.* (citing *Joshua*, 2015 Guam 32 ¶ 20).

IV. ANALYSIS

[8] Manila invokes the "safety valve" of 9 GCA § 80.39.1 in an effort to imply that it should apply to his sentence. *See* Appellant's Br. at 6-8 (July 31, 2017). In particular, he argues that the trial court erred in finding that 9 GCA § 80.39.1 does not apply categorically to violent offenses. *See id.* at 7-8. This argument is inapt because the trial court nonetheless found that application of the safety valve was not appropriate in this case "[i]n the interest of protecting the public." RA, tab 1045 at 6 (Dec. & Order). In other words, the trial court expressly found that Manila did not satisfy 9 GCA § 80.39.1(b), a determination that Manila does not challenge on appeal. Moreover, Manila admits that he

> reiterates that he is not seeking a ruling by this Court that the Superior Court abused its discretion in denying relief pursuant to 9 GCA §§80.39.1 [sic]. He is simply asking that the decision be vacated to permit another Judge to exercise his or her discretion should the case be remanded to another Judge.

Appellant's Reply Br. at 1 (Sept. 28, 2017); *see also* Appellant's Br. at 8 (stating that Manila "is not seeking an outright reversal of this decision or an order from th[e] Court that [9 GCA § 80.39.1] should apply, but rather that it be vacated for the reasons set forth below"). Because Manila expressly states the relief he seeks is *not* a determination that the trial court abused its discretion by denying his section 80.39.1 motion, he concedes the issue. Therefore, we decline to address whether the trial court erred in finding that application of 9 GCA § 80.39.1 was inappropriate.

[9] The result is that Manila's second argument—that the trial court abused its discretion by imposing the same sentence following remand for the first-degree CSC count—becomes the linchpin of his appeal. Manila claims two general grounds for this proposition.[2] First, he argues from implication that our language in *Manila I*—"Given these vacated convictions, it is appropriate for Manila to be resentenced," 2015 Guam 40 ¶ 65—means this court "presumably considered [the reversed charges] or it would not have ordered resentencing." Appellant's Br. at 9. He argues, "the normal language is something more open ended [sic] like, 'This matter is remanded for further proceedings not inconsistent with this Opinion.' The emphasis on vacated convictions suggests something more focused." Reply Br. at 2. Second, he attacks the trial court's articulated reasons for re-imposing a thirty-year sentence, stating "some of the factors that were considered make little sense." *Id.* We address each of these in turn.

A. The Trial Court Had Discretion, on Remand, to Impose an Identical Sentence

[10] The language in *Manila I* that Manila relies on consists of the following: "Given these vacated convictions, it is appropriate for Manila to be resentenced." *Manila I*, 2015 Guam 40 ¶ 65. However, nowhere did we indicate in *Manila I* that a reduced sentence for the affirmed convictions was *required*. *See generally id.* By remanding for resentencing, we gave the trial court discretion to adopt an appropriate procedure, consistent with due process and other protections, including an opportunity for the parties to present arguments related to sentencing,

[2] Manila also attacks the re-imposed sentence by claiming, in passing, that the trial judge has developed hostility toward him. Appellant's Br. at 10 ("[F]or whatever reason, the Superior Court has developed an animus toward him that is inconsistent with a court's duty of impartiality."). This sentence is the entirety of his allegation of personal bias on the part of the trial judge; Manila points to no facts supporting this claim other than the sentence imposed; and the record shows Manila failed to properly preserve the issue by moving for disqualification under 7 GCA §§ 6105 and 6107 (2005), or otherwise arguing the matter prior to appeal. We generally "will not entertain an issue raised for the first time on appeal." *Sinlao v. Sinlao*, 2005 Guam 24 ¶ 30 (collecting cases). Therefore, we decline to address the argument that the trial judge exhibited personal bias.

and an opportunity for the defendant to present allocution.[3] *See, e.g.*, *United States v. Mobley*, 833 F.3d 797, 801-02 (7th Cir. 2016); *cf. United States v. Guzmán-Montañez*, 756 F.3d 1, 12 n.5 (1st Cir. 2014) (acknowledging defendant will have an opportunity to argue for what he claims to be an appropriate sentence on remand). While an appellate court has authority to restrict the scope of a trial court's resentencing, here, in remanding the case we did not require the sentence to be reduced or otherwise limit the trial court's discretion in sentencing. *People v. Damian*, 2016 Guam 8 ¶¶ 22-23; *see also Mobley*, 833 F.3d at 801-02; *United States v. McFalls*, 675 F.3d 599, 604 (6th Cir. 2012); *cf. In re Guardianship of Moylan*, 2017 Guam 28 ¶¶ 27-28 (discussing difference between specific and general mandate). By remanding the case "for resentencing" after vacating certain convictions, the trial court was given flexibility to fashion an appropriate sentence for Manila in light of the vacated convictions, but it was not *required* to impose a shorter sentence. To read *Manila I* otherwise would tenuously read far too much into a single sentence. In his reply brief, Manila concedes as much by stating that the fact some of his convictions were vacated "*does not mean that the Superior Court could not have reached the same conclusion the second time around as the first*, but it never articulated the reasons for doing so." Reply Br. at 2 (emphasis added).

[11] Even assuming, *arguendo*, that we "might reasonably have concluded that a different sentence was appropriate," that fact "is insufficient to justify reversal of the [trial] court." *Gall v. United States*, 552 U.S. 38, 51 (2007). In other words, we are still bound to review the trial court's resentencing under an abuse-of-discretion standard. To that end, we turn to Manila's second ground for claiming the trial court abused its discretion: that the trial court did not

[3] We note that the trial court in fact gave the parties multiple opportunities to litigate the issue of sentencing, through sentencing memoranda and two separate hearings. *See* Transcript ("Tr.") (Mot. Hr'g, Apr. 7, 2017); Tr. (Sentencing Hr'g, May 11, 2017).

meaningfully address the issues presented and it never articulated the reasons for imposing the same sentence. Appellant's Br. at 10; *see also* Reply Br. at 2.

B. The Trial Court Did Not Abuse its Discretion in Sentencing

[12] "A trial court's discretion in sentencing is . . . 'largely unlimited either as to the kind of information [it] may consider, or the source from which it may come.'" *People v. Castro*, 2013 Guam 20 ¶ 62 (quoting *United States v. Pugliese*, 805 F.2d 1117, 1122 (2d Cir. 1986)). Further, "[a]though the trial court may consider a wide range of information, . . . it is not required to take into account all factors that may be considered relevant," and "the imposition of sentences within the statutory limits lies almost entirely within the discretion of the trial judge." *Damian*, 2016 Guam 8 ¶ 23 (quoting *People v. Diaz*, 2007 Guam 3 ¶ 67).

[13] In *Damian*, we recognized that some states have adopted statutes with "a comprehensive list of factors that must be considered by a sentencing judge," while "Guam has only adopted factors to be considered in imposing or withholding probation" under 9 GCA § 80.60. 2016 Guam 8 ¶ 24 (citations omitted). There, we affirmed a sentence where "[t]he court considered the sentencing memoranda provided by the parties and the presentence investigation report, as well as the defendant's allocution and his history and characteristics in general." *Id.* Similarly, in *Diaz*, we upheld a sentence where the court "articulated numerous reasons for imposing the sentence," and "[t]he transcript of the sentencing hearing [was] replete with information regarding the factors the trial judge considered in sentencing [the defendant]." 2007 Guam 3 ¶ 68. In *Diaz* we also found noteworthy the fact that "[t]he court laid out numerous aggravating factors during the hearing, which included the seriousness of the offenses, the abuse of a position of trust, the vulnerability of the victim, [and] the harm caused." *Id.* Our case law as reflected in *Damian*, *Diaz*, *Castro*, and similar cases show that as a general matter, we review whether the

sentence is within the statutory range, the articulated reasons for the sentence, and what information the trial court considered in fashioning a sentence. *See People v. Roby*, 2017 Guam 7 ¶¶ 44-46; *Damian*, 2016 Guam 8 ¶¶ 19-26; *Castro*, 2013 Guam 20 ¶¶ 60-67; *Diaz*, 2007 Guam 3 ¶¶ 67-68.

[14] Here, we find nothing in the record that persuades us the trial court abused its discretion in sentencing Manila to the same thirty-year sentence as originally imposed. The sentence was within the statutorily permitted range for first-degree CSC. 9 GCA § 25.15(b). Prior to sentencing, the trial court received three memoranda from Manila and three from the People. The trial court then held a separate hearing for Manila's motion to apply the "safety valve" of 9 GCA § 80.39.1, *see* Tr. (Mot. Hr'g, Apr. 7, 2017), and issued a separate written decision with respect to this motion, *see* RA, tab 1045 (Dec. & Order). In the sentencing hearing, the trial court considered the updated presentence investigation report and asked the parties if they had received the updated report, to which the parties responded in the affirmative. Tr. at 3 (Sentencing Hr'g, May 11, 2017) (noting presentence investigation report compiled after remand); *see also* RA, tab 1068 (Speed Memo re: Presentence Investigation Report, May 22, 2017) (noting presentence investigation report dated August 16, 2016). The court gave the parties an opportunity to comment on, or object to, the presentence investigation report. Tr. at 4-5 (Sentencing Hr'g). Manila's counsel then had an opportunity to call witnesses on his behalf, which he declined to do. *Id.* at 5. Counsel was given the opportunity to argue for a reduced sentence. *Id.* at 5-8. The court then gave Manila an opportunity to present allocution, which he declined. *Id.* at 9. The court inquired into whether any victims submitted statements, noting only one victim had submitted a victim impact statement, and only in connection with the original sentencing. *Id.* at 13. The court then articulated its findings and its basis for

resentencing Manila to thirty years. *Id.* at 15-19. The court explained why the sentence was appropriate:

> [I]mprisonment is necessary for the protection of the general public, because there is a risk of due -- that during the period of any suspended sentence or probation, that you may commit the crime -- would commit another crime, again, and also that a lesser sentence would depreciate the seriousness of your crimes, and the court, looking at the aggravating factors, note[s] that your conduct caused the harm, your conduct, and that you were compensated to commit the offense. . . . You have abused your position of trust as a police officer. You committed the offense against a particularly vulnerable victim -- victims, and that you committed the offense in conspiracy of [sic] others, and that you committed the offense for gain, sexual gain, and the nature of the offense is violent, and, Mr. Manila, the court notes that you were cooperative with the probation officer, but you chose not to make any statements regarding anything in your case, regarding the nature of the offense.

Id. at 15-16. In short, the trial court sufficiently articulated valid reasons for imposing the same sentence, and the transcript reflects aggravating factors. We see nothing procedurally or substantively flawed in the sentence. Here, similar to *Damian*, "[t]he court considered the sentencing memoranda provided by the parties and the presentence investigation report, as well as the defendant's . . . history and characteristics in general," 2016 Guam 8 ¶ 24, and, similar to *Diaz*, the "transcript of the sentencing hearing is replete with information regarding the factors the trial judge considered," 2007 Guam 3 ¶ 68.

[15] Our view is strengthened by examples of federal and state courts affirming the decisions of lower courts to impose, on remand, the same sentence, in the absence of express instructions to the contrary or any procedural error or substantive unreasonableness. *See, e.g.*, *United States v. Webster*, 820 F.3d 944, 945-46 (8th Cir. 2016) (affirming imposition of same sentence on remand, even though appellate court had "identified in the first appeal several mitigating sentencing factors"); *United States v. Hunter*, 809 F.3d 677, 685 (D.C. Cir. 2016) (affirming imposition of same sentence on remand, where one conviction reversed and others affirmed, in

absence of procedural error); *United States v. Guzman-Montanez*, 808 F.3d 552, 554 (1st Cir. 2015); *People v. Cade*, 506 N.W.2d 586, 587 (Mich. Ct. App. 1993) (affirming imposition of same sentence on remand); *People v. Flowers*, 68 N.E.3d 1228, 1233 (N.Y. 2016) (affirming imposition of same sentence on remand where "the resentencing court provided on-the-record, permissible, and wholly nonvindictive reasons substantiating defendant's sentence").

[16] *Guzman-Montanez* is instructive. There, a defendant was initially convicted of two crimes; one conviction was reversed on appeal, while the other was affirmed and remanded for resentencing. *Guzman-Montanez*, 808 F.3d at 553-54 (citing *Guzmán-Montañez*, 756 F.3d at 12). On remand, the district court applied the same sentence it initially imposed for the affirmed conviction, and for the same reasons. *Id.* at 554. The defendant appealed, arguing that the court committed procedural error by not explaining why it again imposed the same sentence. *Id.* at 555. The defendant asserted the trial court "did not explain why it was giving what he calls a harsher sentence and that, if anything, his record of good prison behavior since the original sentencing should have resulted in a more lenient sentence." *Id.* Nevertheless, the First Circuit did not find the sentence on remand either procedurally or substantively erroneous because the trial court "took all the steps necessary to properly explain the sentence it imposed." *Id.* The court found that the trial court correctly calculated the sentencing range, adequately described the relevant factors it took into consideration, and concluded the sentence was appropriate "to reflect the seriousness of the offense, to protect the public, to deter, and to punish." *Id.* The court further noted "'[w]hile the court ordinarily should identify the main factors upon which it relies, its statement need not be either lengthy or detailed' or 'precise to the point of pedantry.'" *Id.* (quoting *United States v. Turbides-Leonardo*, 468 F.3d 34, 40 (1st Cir. 2006)). Here, the

argument made by Manila is akin to that proposed by the defendant in *Guzman-Montanez* and shares the same fate for similar reasons.

[17] "An abuse of discretion results where the sentence 'is based on an erroneous conclusion of law or where the record contains no evidence on which the judge could have rationally based the decision.'" *Joshua*, 2015 Guam 32 ¶ 33 (quoting *People v. Tedtaotao*, 2015 Guam 9 ¶ 8). There is nothing in the record that indicates the trial court based its sentence on erroneous legal conclusions, and the record contains sufficient evidence supportive of the sentence imposed. We find no abuse of discretion.

V. CONCLUSION

[18] For the foregoing reasons, we **AFFIRM** the amended judgment of the trial court on remand, including the sentence imposed.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
ROBERT J. TORRES
Associate Justice

/s/
KATHERINE A. MARAMAN
Chief Justice