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Supreme Court of Guam, Clerk of Court

IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

JAMES NICHOLAS CORPUZ,
Defendant-Appellant.

OPINION

Cite as: 2019 Guam 1

Supreme Court Case No.: CRA16-014
Superior Court Case No.: CF0321-15

Appeal from the Superior Court of Guam
Argued and submitted on July 12, 2017
Hagåtña, Guam

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

CARBULLIDO, J.:

[1] Defendant-Appellant James Nicholas Corpuz appeals from a final judgment of conviction following a jury trial in which he was found guilty of four counts of First Degree Criminal Sexual Conduct ("CSC") (as a 1st Degree Felony); six counts of Second Degree CSC (as a 1st Degree Felony); two counts of Third Degree CSC (as a 2nd Degree Felony); and one count of Fourth Degree CSC (as a Misdemeanor).[1]

[2] Corpuz asserts three arguments on appeal. First, he contends that his statutory right to a speedy trial was violated in a prior, related case which should have been dismissed with prejudice, barring any subsequent prosecution for this alleged conduct. Second, Corpuz argues the trial court abused its discretion by allowing the People to file an amended indictment. Finally, he attacks his sentence by arguing (a) the trial court failed to give him credit for time detained, (b) the trial court failed to depart from the mandatory minimum sentence, and (c) the sentence was excessive because it applied the maximum permitted sentence for his First Degree CSC convictions.

[3] For the reasons that follow, we affirm in part, vacate in part, and remand for the sole and limited purpose of modifying the sentence to credit Corpuz with prior time detained, under 9 GCA § 80.46(a).

I. FACTUAL AND PROCEDURAL BACKGROUND

[4] This case has a somewhat complicated procedural background that involves three Superior Court of Guam criminal cases. What follows is a chronology of these cases.[2]

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[1] Record on Appeal ("RA"), tab 94 (Judgment, Jan. 23, 2017).

[2] The parties make reference in their briefs to documents from the two Superior Court cases that precede the case presently appealed. Certain of these documents have not been submitted as part of the Record on Appeal;

A. The Original Case: CF0102-15

[5] Corpuz was indicted on two charges of First Degree CSC (as a First Degree Felony) filed under Superior Court of Guam Case No. CF0102-15, alleging incidents of criminal sexual conduct by Corpuz against two minors. He was arraigned and asserted his right to a speedy trial under 8 GCA § 80.60. A pre-trial conference was scheduled for April 7, 2015, and trial was set for April 15, 2015. Because of clerical error, neither the pre-trial conference nor the trial was called by the court on these respective dates.

[6] On April 23, 2015, Corpuz moved to dismiss CF0102-15 with prejudice because his statutory right to a speedy trial under Guam's speedy trial statute, 8 GCA § 80.60, was violated because he had been in custody from the time of his arraignment for a period longer than the 45-day window permitted under 8 GCA § 80.60. In response, the People conceded that a violation of 8 GCA § 80.60 had occurred and there was no good cause for the delay, but argued that dismissal should be without prejudice. On April 29, 2015, the trial court granted Corpuz's motion to dismiss, without prejudice, and a written decision and order followed.

B. The Second Case: CF0262-15

[7] The day following dismissal of CF0102-15, the People obtained a second indictment with identical charges, based on allegations described in the same police report, which was filed under a second case number, Superior Court of Guam Case No. CF0262-15.

[8] Corpuz moved to dismiss CF0262-15, arguing that the dismissal in CF0102-15 should have been with prejudice. Under 8 GCA § 80.70(a), the People likewise moved to dismiss CF0262-15 on the basis that the allegations made by the victims more closely matched the timeline of the offenses charged in CF0321-15, rather than those charged in CF0262-15. *See generally* 8 GCA § 80.70(a) ("The prosecuting attorney may with leave of court file a dismissal

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however, we exercise our ability to take judicial notice of the existence of these documents pursuant to Guam Rules of Evidence ("GRE") 201(b), 201(c), and 201(f). *See* Guam R. Evid. 201(b), (c), (f); *see also In re N.A.*, 2001 Guam 7 ¶ 58 ("It is proper to take judicial notice of court files." (citing *In re S.S.*, 334 N.W.2d 59, 61 (S.D. 1983))).

of an indictment . . . and the prosecution shall thereupon terminate."). The trial court summarily granted the People's motion, without prejudice and without considering any substantive arguments presented by either party.

C. The Third and Present Case: CF0321-15

[9] Less than a month after indicting Corpuz in CF0262-15, the People also obtained a third, superseding indictment with several additional charges, related to the allegations described in the initial police report, and alleging different specific date ranges of criminal sexual conduct. This third indictment was filed under Superior Court of Guam Case No. CF0321-15 and is the subject of the present appeal. Corpuz moved to dismiss the present case, CF0321-15, arguing that dismissal in CF0102-15 should have been with prejudice. The trial court denied Corpuz's motion to dismiss. Corpuz sought interlocutory review, which we denied. *See* CRA15-031 (Pet. Permission to Appeal (Aug. 25, 2015)); CRA15-031 (Order (Sept. 28, 2015)). Subsequently, CF0321-15 went to trial. During trial, the People moved to amend certain counts in the indictment to conform to the testimony of one of the victims. Transcript ("Tr.") at 121-124 (Jury Trial, May 18, 2016). Specifically, the People requested dismissal of two counts of First Degree CSC and amendment of three counts of Second Degree CSC. *Id.* at 121. The trial court dismissed the two pertinent counts of First Degree CSC. *Id.* at 122. Over Corpuz's objection, the trial court also granted the People's motion to amend the indictment. *Id.* at 189-90. A jury found Corpuz guilty of four counts of First Degree CSC (as a First Degree Felony); six counts of Second Degree CSC (as a First Degree Felony); two counts of Third Degree CSC (as a Second Degree Felony); and one count of Fourth Degree CSC (as a Misdemeanor).

[10] With all sentences to run concurrently, Corpuz was sentenced to life imprisonment without the possibility of parole for each of the four counts of First Degree CSC; five years for each of the six counts of Second Degree CSC; five years for each of the two counts of Third

Degree CSC; and one year for the single count of Fourth Degree CSC. Final judgment was entered, and Corpuz timely appealed.

II. JURISDICTION

[11] This court has jurisdiction over an appeal from a final judgment of the Superior Court. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 116-5 (2019)); 7 GCA §§ 3107(b), 3108(a) (2005); 8 GCA §§ 130.10, 130.15(a) (2005).

III. STANDARD OF REVIEW

[12] "Generally, a reviewing court considers a trial court's ultimate ruling on a motion to dismiss charges under an abuse-of-discretion standard . . . ." *People v. Rios*, 2008 Guam 22 ¶ 8 (quoting *People v. King*, 852 N.E.2d 559, 560 (Ill. App. Ct. 2006)). "A trial court abuses its discretion when its decision 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." *Town House Dep't Stores, Inc. v. Ahn*, 2003 Guam 6 ¶ 27 (quoting *Brown v. Eastman Kodak Co.*, 2000 Guam 30 ¶ 11). "Issues of statutory interpretation are reviewed *de novo*." *Ada v. Guam Tel. Auth.*, 1999 Guam 10 ¶ 10 (citation omitted).

[13] In reviewing an amendment to an indictment, "[a]lthough 'review of a trial court's decision to permit an amendment to a charging document is one of abuse of discretion,' the underlying question of whether the amendment charged new or different offenses or prejudiced the defendant is reviewed *de novo*." *People v. San Nicolas*, 2013 Guam 21 ¶ 9 (internal citations omitted).

[14] In reviewing the sentence imposed by the trial court, we review for an abuse of discretion. *People v. Manibusan*, 2016 Guam 40 ¶ 12 (citation omitted). "Reviewing the imposed sentencing terms also requires statutory interpretation[,] which we review *de novo*." *Id.* (citation omitted).

IV. ANALYSIS

[15] Corpuz contends that CF0102-15 should have been dismissed with prejudice, barring any subsequent prosecution, including the present case. Corpuz also argues the trial court abused its discretion by allowing the People to file an amended indictment at trial. Finally, he attacks his sentence by arguing that: (a) his sentence should have been credited for time detained, (b) the trial court should have departed from the mandatory minimum sentence, and (c) the trial court should not have applied the maximum-permitted sentence for his First Degree CSC convictions. We address each argument in turn.

A. The Trial Court Did Not Abuse Its Discretion in Denying Corpuz's Motion to Dismiss

[16] Corpuz contends that the present case, CF0321-15, should have been dismissed because the trial court in CF0102-15 abused its discretion by failing to dismiss his case with prejudice because of the violation of his rights under Guam's speedy trial statute, 8 GCA § 80.60.[3] Appellant's Br. 13-16 (Mar. 27, 2017). Corpuz argues this violation in CF0102-15 "serves as an absolute bar preventing" subsequent prosecution for the same or similar charges. Appellant's Br. at 17. Corpuz asserts filing the indictment in the present case "was intended to, or clearly operates to circumvent" the requirement that a case be brought to trial within 45 days and

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[3] Title 8 GCA § 80.60 states, in relevant part:

> (a) Except as otherwise provided in Subsection (b), the court shall dismiss a criminal action if:
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> . . . ;
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> (2) The trial of a defendant, who is in custody at the time of his arraignment, has not commenced within forty-five (45) days after his arraignment; . . .
>
> . . . .
>
> (b) 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 (2005).

therefore should be barred, under the holding in *People v. Flores*, 2009 Guam 22. Appellant's Br. at 18-20; Reply Br. at 8-14 (Apr. 21, 2017).[4]

[17] The People concede that Corpuz's statutory speedy trial rights were violated in CF0102-15 and that no good cause existed that could save such violation. *See* CF0102-15 (People's Resp. to Mot. Dismiss at 2 (Apr. 28, 2015)); *see also* Appellee's Br. at 19 (Apr. 7, 2017). However, the People contend the trial court was not *required* to dismiss CF0102-15 with prejudice. Appellee's Br. at 19-21. The People reject the contention that any dismissal under 8 GCA § 80.60 must be *per se* with prejudice, arguing the federal Speedy Trial Act factors apply, as set out in *People v. Aromin*, 2014 Guam 3. *Id.* at 19-26. The People assert that the trial courts that considered the merits of Corpuz's motions to dismiss correctly determined that the federal Speedy Trial Act factors favored dismissal without prejudice. *Id.* at 23-26.

[18] Where a defendant's statutory right to speedy trial is violated, "[t]he issue of whether the case should be dismissed with or without prejudice should be decided in the first instance by the trial court." *Nicholson v. Superior Court (People)*, 2007 Guam 9 ¶ 29. We have "never ruled that a speedy trial violation requires an automatic dismissal with prejudice," and Guam's speedy trial statute does not contain a default presumption one way or the other—making both available to the trial court. *Aromin*, 2014 Guam 3 ¶¶ 14, 20-21; *see also* 8 GCA § 80.60 (2005).

[4] Corpuz does not assert on appeal that his statutory right to a speedy trial was independently violated in either CF0262-15 or CF0321-15. *See* Appellant's Br. at 13-20; Reply Br. at 5-14. Likewise, Corpuz's motions throughout trial were consistently based on the argument that the first case should have been dismissed with prejudice and therefore barred all subsequent reprosecution; his trial court motions to dismiss the second and third cases never asserted that there was an independent violation under those cases of his speedy trial clock. *See* CF0102-15 (Mot. Dismiss at 5 (Apr. 23, 2015)) (arguing for dismissal with prejudice as a result of violation of statutory speedy trial in first proceeding); CF0262-15 (Mot. Dismiss at 4 (June 11, 2015)) (same); RA, tab 16 at 5 (Mot. Dismiss, June 19, 2015) ("For consistency, he now moves to dismiss the newest indictment due to the original violation of his statutory speedy trial grounds [sic] and takes the position that the Court should have granted the original dismissal with prejudice."). Therefore, we need not review whether Corpuz's statutory speedy trial rights were separately violated under CF0262-15 or CF0321-15. *See, e.g.*, *People v. Mendiola*, 2015 Guam 26 ¶ 26 ("As a general rule, this court will not evaluate an argument which was not presented for consideration to the trial court. . . . [A] party seeking review must 'clearly raise[] the statutory [speedy trial] issue.'" (second alteration in original) (citations omitted)). Additionally, Corpuz is not claiming that his Sixth Amendment right to a speedy trial was violated in any of the cases brought against him, *see* Reply Br. at 14, therefore we need not review whether this is the case, *see, e.g.*, *Mendiola*, 2015 Guam 26 ¶ 26.

[19] *Aromin* involved the violation of a defendant's right to prompt arraignment. There, we held that where a defendant's right to prompt arraignment is violated, trial courts should decide how to characterize a dismissal. *Id.* ¶ 16. We further held that when determining whether to dismiss a case with or without prejudice, trial courts must apply the federal Speedy Trial Act factors. *Id.* ¶ 21.

[20] Although *Aromin* specifically dealt with prompt arraignment, much of its discussion revolved around Guam's speedy trial statute. *See id.* ¶¶ 20-21. In *Aromin*, we noted that a trial court can "withhold dismissal altogether upon a showing of 'good cause,'" therefore "it seems only logical" that the prompt arraignment statute "would also allow the intermediate remedy of dismissal without prejudice." *Id.* ¶ 16. This logic equally applies in the present case because under 8 GCA § 80.60(b)(3), a trial court must withhold dismissal for violating a defendant's statutory right to speedy trial where there is good cause. *See* 8 GCA § 80.60(b)(3). It stands to reason the intermediate remedy of dismissal without prejudice is likewise permitted. If we were to interpret 8 GCA § 80.60 to *require* dismissal with prejudice, the trial court would have "no discretion to consider the facts and circumstances of the case before it." *Id.* ¶ 17. Therefore, we hold that in cases involving the violation of a defendant's statutory right to speedy trial under 8 GCA § 80.60, trial courts must apply the federal Speedy Trial Act factors when deciding whether to dismiss with or without prejudice.

[21] We turn to whether the two trial courts, in evaluating the merits of Corpuz's arguments, applied the federal Speedy Trial Act factors appropriately. These factors are: "(1) the seriousness of the offense; (2) the facts and circumstances of the case which led to the dismissal; and (3) the impact of a reprosecution on the administration of justice." *Id.* ¶ 21.

[22] For the first factor, both trial courts found that the severity of sentences that could apply to the felony charges against Corpuz—including life without parole—heavily favored dismissal

without prejudice. *See* RA, tab 16, Ex. A at 11 (Dec. & Order, CF0102-15); RA, tab 30 at 6 (Dec. & Order, CF0321-15). We agree. "[W]here the crime charged is serious, the sanction of dismissal with prejudice should ordinarily be imposed only for serious delay." *United States v. Bert*, 814 F.3d 70, 79 (2d Cir. 2016) (quoting *United States v. Simmons*, 786 F.2d 479, 485 (2d Cir. 1986)). The Guam Legislature has determined that First Degree CSC is a serious felony, implementing special statutory sentencing ranges, as provided in 9 GCA § 25.15(b), because of "extreme physical and psychological damage to . . . young victims" and to "send a strong message to the community that those responsible for these crimes will serve . . . lengthy prison sentences." Guam Pub. L. 23-114, Comm. on Judiciary, Crim. Justice & Envtl. Affairs, Comm. Rep. on Bill No. 449, Finds. & Recommendation (Feb. 21, 1996). Here, neither party disputes the seriousness of Corpuz's crimes. This factor weighs heavily for dismissal without prejudice.

[23] For the second factor, both trial courts found that the delay involved a clerical error, thus weighing in favor of dismissal without prejudice. *See* RA, tab 16, Ex. A at 6-7 (Dec. & Order, CF0102-15); RA, tab 30 at 6 (Dec. & Order, CF0321-15). This factor "includes, but is not limited to, the facts and circumstances surrounding the length of delay, government conduct, and actual prejudice suffered by the defendant." *Aromin*, 2014 Guam 3 ¶ 21 (footnote omitted). In evaluating this factor we "focus[] equally on the impact of the court's conduct and the impact of the government's conduct on any judicial delay." *Bert*, 814 F.3d at 80 (citation omitted). "[C]ourts must hold themselves accountable for ensuring their own compliance with" statutory speedy trial requirements, and when a violation is caused by the court or a prosecutor, it weighs in favor of granting dismissal with prejudice. *Id.* at 80-81. However, "where the 'delay [is] not overly long' and there has been no showing of prejudice," "negligent conduct by the court or the government 'renders the second factor . . . neutral, at best.'" *Id.* at 80 (first alteration in original) (quoting *Simmons*, 786 F.2d at 486). While not dispositive, under this second factor we also

evaluate whether the court's or government's conduct rises to the level of "'something more than an isolated unwitting violation,' such as a finding of 'bad faith' or a 'pattern of neglect.'" *Id.* (quoting *United States v. Taylor*, 487 U.S. 326, 339 (1988)).

[24] The trial in the initial case against Corpuz was scheduled to begin on April 15, 2015, while the statutory deadline for Corpuz to face trial was April 18, 2015. The trial did not proceed on April 15, 2015, through no fault of Corpuz's. Corpuz then moved to dismiss on April 23, 2015, and the trial court granted dismissal without prejudice on April 29, 2015, and released him from confinement that same day. Although the fact the delay resulted from the court's failure to call the case on April 15, 2015, would—standing alone—weigh in favor of dismissal with prejudice, because this second factor requires evaluating the totality of the facts and circumstances surrounding the delay, *see, e.g.*, *Aromin*, 2014 Guam 3 ¶ 21, we also find that the delay was not "overly long" or the result of "bad faith" or a "pattern of neglect" by either the court or the People. The record reflects what is an "isolated unwitting violation." *Bert*, 814 F.3d at 80 (citation omitted).

[25] In addition, we are unpersuaded that Corpuz incurred actual prejudice. An "[i]nordinate delay between public charge and trial" may (1) prejudice "a defense on the merits"—such as through the deterioration of crucial evidence, unavailability of witnesses, or subversion of the defendant's ability to prepare for trial—or (2) seriously prejudice "defendant's liberty, . . . disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends." *Bert*, 814 F.3d at 82 (quoting *Taylor*, 487 U.S. at 340-41) (explaining prejudice to defendant may come in trial prejudice or non-trial prejudice); *see also Aromin*, 2014 Guam 3 ¶ 24 (mentioning examples of prejudice such as witness unavailability, deterioration of exculpatory evidence, or curtailment of defendant's liberty). Here, the duration of the delay before Corpuz's release from confinement

in his initial case was less than two weeks; further, he was re-indicted the day following dismissal, with a superseding indictment issued less than a month later. The People vigorously pursued resolution of his case; Corpuz provides no evidence he suffered any prejudice beyond the filing of the additional indictments.[5] *See* Appellant's Br. at 10; Reply Br. at 5-6.

[26] Notwithstanding this absence of prejudice, Corpuz urges us to view the People's subsequent indictments as "intended to, or clearly operat[ing] to circumvent" statutory speedy trial requirements. Appellant's Br. at 19. In doing so he places heavy reliance on our holding in *Flores*. *See id.* at 17-19.[6] In effect, he asks for an automatic rule that whenever there is a violation under 8 GCA § 80.60, any subsequent indictments are *per se* attempts to circumvent statutory speedy trial requirements. We find this line of argument unpersuasive and wholly indifferent to the facts and circumstances of each case. Unlike the present case, *Flores* raised the specific concern that the prosecution might be attempting to manipulate the statutory speedy trial clock because the People were moving to dismiss an indictment *nolle prosequi* under 8 GCA § 80.70. *See Flores*, 2009 Guam 22 ¶ 23-29. Here, there is an absence in the record of bad faith or

[5] On the issue of prejudice, Corpuz argues for the first time in his reply brief that one of his justifications for "the granting of an interlocutory appeal, [sic] was that he must appeal pre-judgment to avoid substantial and irreparable injury because a post-judgment appeal would require him to show both an error and how he suffered prejudice as a result of the error." Reply Br. at 7. Issues raised for the first time in a reply brief are generally deemed waived, *see People v. Borja*, 2017 Guam 20 ¶ 28 (citation omitted), therefore we would be well within our authority to refuse to entertain this argument. That said, we point out that this line of argument erroneously frames the issue because it conflates the issue of prejudice for the purposes of showing a "substantial and irreparable injury" under 7 GCA § 3108(b) with the issue of prejudice as it relates to the application of the federal Speedy Trial Act. As *Aromin* shows, even if Corpuz had been granted interlocutory appeal, he still would have been required to show that the federal Speedy Trial Act factors weighed in his favor, including a showing of prejudice. *See Aromin*, 2014 Guam 3 ¶ 1, 24 (reviewing whether defendant sustained prejudice on an interlocutory appeal); *cf. United States v. Clark*, 577 F.3d 273, 280, 283-84 (5th Cir. 2009) (analyzing prejudice sustained by a defendant who had been denied interlocutory appeal, without presuming any prejudice as a result of the denial). Thus, Corpuz is in the same position post-conviction as he would be if he had been granted interlocutory appeal as it relates to the issue of showing prejudice under the federal Speedy Trial Act factors.

[6] The only other case from Guam that Corpuz cites in the portion of his briefs dedicated to the issue of whether the first case barred subsequent reprosecution is *Ungacta v. Superior Court (People)*, 2013 Guam 29. Reply Br. at 11 (citing *Ungacta* for the proposition that "when a defendant's statutory right to a speedy trial set forth in 8 GCA § 80.60 is violated, prejudice to the party is presumed"). In doing so, Corpuz fails to distinguish the issue of whether a defendant's statutory speedy trial rights were violated in the *first instance*—which is not in dispute here—from the separate issue of whether, once a statutory speedy trial violation is found, such dismissal should be with or without prejudice. *Ungacta* involved the former issue, *see* 2013 Guam 29 ¶ 9-10, and therefore did not specifically contemplate the application of the federal Speedy Trial Act factors to the question of whether the case should be dismissed with or without prejudice, *see Aromin*, 2014 Guam 3 ¶¶ 18-21.

a pattern of neglect by the People. *Cf. United States v. Koerber*, 813 F.3d 1262, 1277-79, 1282-83 (10th Cir. 2016) (finding evidence of prosecutorial bad faith and dilatory tactics where the government missed two court-ordered deadlines; filed one-sentence or one-paragraph motions apparently to exclude time under the federal Speedy Trial Act; delayed discovery; mishandled critical information; and produced documents in its possession for years, only after a hearing on whether to dismiss with or without prejudice). Therefore, even though the delay resulted from the court's error, without evidence of any actual prejudice to Corpuz, or evidence the delay was "overly long" or resulted from "bad faith" or a "pattern of neglect," we find this factor neutral at best.

[27] Finally, the trial courts found that the third factor did not justify barring re-prosecution, given the other two factors. We agree. Dismissal with prejudice is a stronger sanction, yet "[i]t is beyond question that 'dismissal without prejudice is not a toothless sanction.'" *Bert*, 814 F.3d at 82 (quoting *Taylor*, 487 U.S. at 342). Dismissal without prejudice requires the People to obtain a new indictment and potentially face dismissal on statute of limitations grounds. *Taylor*, 487 U.S. at 342.

[28] Here, the third factor is neutral at best. While the record on appeal does not give the exact reasons the pre-trial conference and the trial for CF0102-15 did not proceed on the scheduled dates, the violation appears, by all measures, to be a single occurrence resulting from an administrative error, and the People moved quickly to re-indict Corpuz and bring him to trial. We do not find these facts to require the substantially more onerous sanction of dismissal with prejudice.

[29] We find the first factor—weighing heavily against dismissal with prejudice—is not vitiated by the neutrality of the second and third factors. Moreover, we review for abuse of discretion. *See Rios*, 2008 Guam 22 ¶ 8. Under that standard, we reverse when the court's

decision is based on an erroneous conclusion of law or where the record fails to contain evidence on which the trial court could have rationally based its decision. *Town House*, 2003 Guam 6 ¶ 27. Stated otherwise, abuse of discretion occurs "when the trial court 'exceeds the bounds of reason, all of the circumstances before it being considered.'" *Nicholson*, 2007 Guam 9 ¶ 13 (quoting *People v. Ibanez*, DCA 91-0001A, 1992 WL 97221, at *2 (D. Guam App. Div. Apr. 16, 1992)). Because of this standard and our foregoing review of the entire record and the law, we find the trial court did not abuse its discretion by denying Corpuz's motion to dismiss.

B. The Trial Court Did Not Abuse Its Discretion by Allowing the People to File an Amended Indictment

[30] At trial, the People moved to amend the indictment to conform to one victim's testimony. Specifically, the People requested the dismissal of two counts of First Degree CSC and the removal of the following language in three counts of Second Degree CSC: "to wit: by causing his hand to touch the breast of" victim, "to wit: by causing penis to touch the buttocks of" victim, and "to wit: by causing his penis to touch the primary genital area of" victim. Tr. at 121 (Jury Trial, May 18, 2016); *see also* RA, tab 2 (Indictment, May 26, 2015). After removal of this language, these counts alleged simply "sexual contact," tracking the language of 9 GCA § 25.20(a)(1) and (b). Tr. at 122 (Jury Trial, May 18, 2016). *Compare* RA, tab 65 (Am. Indictment, May 19, 2016), *with* RA, tab 2 (Indictment, May 26, 2015). The People moved for this amendment because one victim testified that Corpuz never touched her with anything but his hands, contrary to the specific "to wit" language in the original indictment. Tr. at 100-01, 105 (Jury Trial, May 18, 2016). Corpuz objected. *Id.* at 121-22. The trial court granted the People's motion to amend. *Id.* at 190. Corpuz argues these amendments were substantive, material, resulted in the charging of new and different offenses, and caused prejudice by nullifying his defenses to the affected counts. Appellant's Br. at 22-23.

[31] Defendants in criminal cases have a constitutionally protected right to be informed of the nature and cause of charges brought against them. *See generally* U.S. Const. amends. VI & XIV; 48 U.S.C.A. § 1421b(g), (u). In analyzing the amendment to an indictment against this constitutional background, we first look to 8 GCA § 55.20, which provides that a court "may permit an indictment or information to be amended upon the application of the prosecuting attorney at any time before verdict or finding [(1)] if no additional [or] different offense is charged *and* [(2)] if substantial rights of the defendant are not prejudiced." 8 GCA § 55.20 (2005) (second alteration in original) (emphasis added); *see also People v. Riocne*, 2012 Guam 5 ¶¶ 7-14.

[32] In analyzing the first prong of this two-part test, "[a]n amendment to an indictment which alleges *no new facts* and cites *no new statutory citation* has been held not to charge an additional or different offense." *Riocne*, 2012 Guam 5 ¶ 10 (emphases added) (quoting *People v. Diaz*, 2007 Guam 3 ¶ 16). "[T]he allegation of new facts does not necessarily charge a new or different offense." *Id.* (citation omitted). In analyzing the second prong, the standard for determining whether the defendant's substantial rights have been prejudiced is whether "a defense under an indictment as it originally stood would be equally available after the amendment is made, and whether any evidence the defendant might have would be equally applicable to the indictment in the one form as in the other." *Id.* ¶ 13 (quoting *Diaz*, 2007 Guam 3 ¶ 17). Under this prong, courts also look at whether the indictments "[i]nvolve the same basic elements and evolved out of the same factual situation . . . . If so, then the defendant is deemed to have been placed on notice regarding his alleged criminal conduct." *Id.* ¶ 14 (quoting *Commonwealth v. Stanley*, 401 A.2d 1166, 1175 (Pa. Super. Ct. 1979)).

[33] Here, the amendments to the indictment still referred to crimes committed under the same statutory subsection referenced in the original indictment, 9 GCA § 25.20(a)(1) and (b).

Compare RA, tab 65 (Am. Indictment, May 19, 2016), *with* RA, tab 2 (Indictment, May 26, 2015). The amended indictment alleges six counts of Second Degree CSC under this subsection, just as the original indictment. No new statutory offense, or different degree of CSC, was charged. The charge for Second Degree CSC requires only the element of "sexual contact" with a minor under the age of fourteen; the specific *method* of sexual contact is not an element of the crime under 9 GCA § 25.20(a)(1) and (b), or under the statutory definition of "sexual contact" under 9 GCA § 25.10(a)(8). Section 25.10(a)(8) defines "sexual contact" as the "intentional touching of the victim'' or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification." 9 GCA § 25.10(a)(8) (2005). This definition includes, but is not limited to, the acts alleged in the original indictment. Therefore, Corpuz was not charged with an additional or different statutory offense.

[34] Under the second prong, we must also look at whether any alleged facts added to the indictment substantially prejudiced the defendant. *See Riocne*, 2012 Guam 5 ¶¶ 10, 13-14; *Diaz*, 2007 Guam 3 ¶¶ 16-17. Here, we fail to see how the People's amended indictment alleged any new or additional fact, because it merely removed surplus language; yet even if we assumed the amendment alleged a distinctly new fact, Corpuz was not prejudiced by this change. First, Corpuz's defense throughout trial was that he did not engage in sexual contact with the victims and that the victims fabricated their allegations. *See, e.g.*, Tr. at 23, 25-27, 29 (Closing Statements, May 20, 2016). This defense does not turn on disproving any *method* of sexual contact—it relies exclusively on the claim there was *no* sexual contact. Therefore, Corpuz did not suffer prejudice from the amendment, which merely removed surplus language unnecessary to sustain the charge. *Cf. Riocne*, 2012 Guam 5 ¶ 13 (finding defendant's defense did not change

notwithstanding the changed indictment). Second, the crime alleged in the amended indictment involved the same elements and evolved out of the same factual situation, so Corpuz was "apprised of the charges against him." *Id.* ¶ 14 (citation omitted). While Corpuz might suggest that he was surprised by the amendment, his surprise cannot plausibly be unfair or prejudicial. He was on notice of the Second Degree CSC charges from the moment the original indictment was filed, and the modified indictment involved the same elements and arose from the same factual situation. Therefore, the amended indictment did not produce a new offense to prejudice his substantial rights.

[35] Corpuz urges this court, *see* Appellant's Br. at 22-23, to analogize his case to *People v. San Nicolas*, where we reversed and vacated a CSC conviction because the trial court permitted an amendment that resulted in new and different charges, *see* 2013 Guam 21 ¶¶ 27-28. This analysis is misplaced because *San Nicolas* easily differs in one important respect. There, a different statutory offense was charged: the amended indictment elevated one alleged crime from Third Degree CSC to First Degree CSC and incorporated a new charge of Second Degree CSC where none had existed. *San Nicolas*, 2013 Guam 21 ¶ 20. Here, the amendments fall under the same statutory subsection as the original indictment and allege no new crimes. This difference alone is fatal to the suggested analogy.

[36] For the foregoing reasons, the trial court did not abuse its discretion by allowing the People to file an amended indictment.

C. Sentencing

1. Credit for Time Previously Detained

[37] Corpuz asserts that the trial court failed to give him credit for the time he was detained in connection with CF0102-15, which he had requested at his sentencing hearing. Appellant's Br. at 24-25; Tr. at 8 (Sentencing Hr'g, Nov. 14, 2016). He argues the trial court had to credit this

time to his sentence under 9 GCA § 80.46. Appellant's Br. at 24-25. The People concede that Corpuz's sentence should be credited for prior time served. Appellee's Br. at 35.

[38] Section 80.46(a) states: "When an offender who is sentenced to imprisonment has previously been detained . . . for the conduct for which such sentence is imposed, such period of detention *shall* be deducted from the maximum and minimum term of such sentence." 9 GCA § 80.46(a) (2005) (emphasis added). "The plain meaning of this statute is that the credit for time served is obligatory." *People v. Mallo*, 2008 Guam 23 ¶ 24.

[39] For whatever reason, the trial court did not address this matter in the final judgment or at the sentencing hearing. *See* RA, tab 94 at 3 (Judgment); Tr. at 8 (Sentencing Hr'g, Nov. 14, 2016). Therefore, we remand to correct the judgment to credit Corpuz's sentence under 9 GCA § 80.46(a).[7]

2. Mandatory Minimum Sentence

[40] Corpuz was sentenced to life without the possibility of parole on each of the four counts of First Degree CSC. RA, tab 94 at 3 (Judgment). Corpuz argues that he should be sentenced to ten years' incarceration, which is less than the fifteen-year mandatory minimum sentence required under 9 GCA § 25.15(b). Appellant's Br. at 27-28; *see also* Tr. at 8 (Sentencing Hr'g, Nov. 14, 2016); RA, tab 86 at 4 (Sentencing Mem., Nov. 14, 2016).

[41] Title 9 GCA § 25.15(b) provides: "Criminal sexual conduct in the first degree is a felony in the first degree. Any person convicted of [first degree] criminal sexual conduct . . . *shall* be sentenced to a minimum of fifteen (15) years imprisonment, and *may* be sentenced to a

[7] One may wonder why a defendant sentenced to life without parole should be credited with prior time detained. The plain language of the statute alone is sufficient reason; there is compelling, inherent value to the proper administration of justice in seeing that sentencing statutes are properly adhered to. Further, from a practical standpoint, while a defendant serving a life sentence "may not derive benefit from such credit in the same manner as one serving a determinate sentence[,] . . . the time served by [the defendant] may be relevant to the granting of executive clemency or the receipt of privileges during imprisonment." *Pruett v. State*, 332 N.E.2d 212, 213 (Ind. 1975). As a result, trial courts should continue to apply 9 GCA § 80.46(a) even where defendants may face life sentences without parole.

maximum of life imprisonment without the possibility of parole." 9 GCA § 25.15(b) (as amended by P.L. 32-012:2 (Apr. 11, 2013)) (emphases added). Corpuz argues that under the "safety valve" provisions of 9 GCA § 80.39.1, the trial court may depart from the mandatory minimum sentence. Appellant's Br. at 25-26. Section 80.39.1 reads:

> Notwithstanding any other provision of law, the court *may* depart from the applicable mandatory minimum sentence *if* the court finds substantial and compelling reasons on the record that, in giving due regard to the nature of the crime, the history and character of the defendant, and his or her chances of successful rehabilitation, that:
>
> (a) imposition of the mandatory minimum sentence would result in substantial injustice to the defendant; and
>
> (b) the mandatory minimum sentence is not necessary for the protection of the public.

9 GCA § 80.39.1 (added by P.L. 33-022:2 (May 2, 2015)) (emphases added). Corpuz argues that 9 GCA § 80.39.1 militates for departing from the mandatory minimum sentence because of his prior history, his personal circumstances, and alleged doubts regarding the victim's testimony. Appellant's Br. at 25-26.

[42] These arguments are unpersuasive. The plain meaning of the statutory language indicates the "safety valve" provision of 9 GCA § 80.39.1 is within the discretion of the trial court, while the mandatory minimum sentence under 9 GCA § 25.15(b) is obligatory. Juxtaposing these two statutes does not cause any ambiguity that might imply the trial court *must* depart from the statutorily mandated minimum sentence. *Cf. People v. Enriquez*, 2014 Guam 11 ¶ 29 (in resolving a statutory conflict, "the court first reviews the plain meaning of the statutes in connection with each other, but if the ambiguity remains after such review, we must then examine the legislature's intent when passing the law, and/or review case law for past precedent." (citations omitted)). Here, no statutory conflict gives rise to an ambiguity that would require us to look beyond the plain meaning of the statutory language.

[43] Further, the "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. Damian*, 2016 Guam 8 ¶ 22 (quoting *People v. Castro*, 2013 Guam 20 ¶ 62) (citing *Burns v. United States*, 287 U.S. 216, 220 (1932)). Here, the trial court made a reasonable and articulate decision, considering the evidence, Corpuz's sentencing memorandum, and the impact on the community. Tr. at 11-12 (Sentencing Hr'g, Nov. 14, 2016). The trial court found no substantial and compelling reasons to depart from the mandatory minimum sentence it had to apply for the First Degree CSC charges. *See id.* Therefore, we find no abuse of discretion by the trial court in sentencing Corpuz.

3. Maximum Permitted Sentence

[44] Citing no authority or case law, Corpuz asserts that applying the sentence of life imprisonment without the possibility of parole for his First Degree CSC convictions was excessive. Appellant's Br. at 27-28. The trial court imposed a sentence within the statutory range for First Degree CSC—from fifteen years to life without parole—as permitted under 9 GCA § 25.15(b). As this court has noted, "the imposition of sentences within the statutory limits lies almost entirely within the discretion of the trial judge." *Damian*, 2016 Guam 8 ¶ 23 (quoting *Diaz*, 2007 Guam 3 ¶ 67). We see no procedural or substantive sentencing errors in the record before us. The sentence of life without parole was within the statutorily-permitted range. The trial court considered Corpuz's sentencing memorandum, the victim impact statements, the evidence, and the impact on the community. *See* Tr. at 2, 6-10, 11-12 (Sentencing Hr'g., Nov. 14, 2016). Further, the trial court sufficiently articulated its reasons for imposing the sentence, and the transcript reflects the factors the trial judge considered in sentencing. Therefore, we find no abuse of discretion by the trial court in sentencing Corpuz.

V. CONCLUSION

[45] We **VACATE** the Judgment in part as it relates to crediting Corpuz with prior time served, and we **REMAND** for the sole and limited purpose of modifying the sentence to credit Corpuz with prior time detained, under 9 GCA § 80.46(a). We **AFFIRM** the remainder of the Judgment.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
ROBERT J. TORRES
Associate Justice

/s/
KATHERINE A. MARAMAN
Chief Justice