



Filed

Supreme Court of Guam, Clerk of Court

IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

CHRIS JUNIOR ANDERSON TEDTAOTAO,
Defendant-Appellant.

Supreme Court Case No.: CRA22-011
Superior Court Case Nos.: CF0690-17; CF0691-17

OPINION

Cite as: 2023 Guam 21

Appeal from the Superior Court of Guam
Argued and submitted on June 15, 2023
Hagåtña, Guam

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

MARAMAN, J.:

[1] This is an appeal from a judgment sentencing Defendant-Appellant Chris Junior Anderson Tedtaotao to five years of imprisonment under the terms of a 2018 plea agreement. In exchange for his cooperation, Plaintiff-Appellee People of Guam (“People”) agreed to a sentence of three years’ incarceration for Tedtaotao’s involvement in the 2017 robberies of the Tamuning Plaza Hotel in Tamuning and Hills Market in Yigo. The plea agreement also specified that Tedtaotao would cooperate in a seemingly unrelated prosecution for an attack that occurred on an inmate at the Department of Corrections (“DOC”) in 2017. The parties agreed that Tedtaotao’s sentencing hearing would be continued and that he would remain on pre-sentencing release “until after his cooperation is completed.” Record on Appeal [CF0690-17] (“RA.0690”), tab 129 at 8 ¶ 9(e) (Plea Agreement, Sept. 12, 2018).

[2] It is undisputed that Tedtaotao cooperated. But the plea agreement contained a provision that would increase Tedtaotao’s term of imprisonment to five years if he remained cooperative but committed a new offense. This provision’s interpretation lies at the core of this case, as there is no dispute that Tedtaotao committed multiple new offenses after entering into the plea agreement. On February 27, 2019, Tedtaotao surreptitiously entered the back seat of a parked car to take a travel bag, then two months later was arrested by officers of the Guam Police Department (“GPD”) in a stolen rental car.¹ See Super. Ct. Case Nos. CF0118-19, CF0237-19 (Plea Agreement (Jan. 7,

¹ Although outside the record of this appeal, we can properly take judicial notice of Tedtaotao’s global plea agreement resolving these cases, which served as an admission of the factual circumstances underlying the crimes. See *People v. Chung*, 2004 Guam 2 ¶ 14 (“[A] guilty plea is an admission of all the elements of a formal criminal charge” (citation omitted)). Many documents from Tedtaotao’s other criminal cases are not included in the Record on Appeal in this case. In our discretion, and without request, we take judicial notice of this and certain other

2022)); CF0118-19 (Magis.'s Compl. at 3 (Mar. 1, 2019)); CF0237-19 (Magis.'s Compl. at 6 (Apr. 20, 2019)). The People moved for Tedtaotao to be sentenced and asked that he receive five years under the plea agreement's penalty for new offenses. The trial court obliged, and on September 19, 2022, judgment was entered against Tedtaotao, sentencing him to five years' imprisonment. Tedtaotao argues he did not breach his plea agreement because his cooperation was "completed" before the new offenses were committed. He asks this court to enforce the agreement and reduce his sentence to three years.

[3] We affirm the judgment because, when interpreted as a whole, the plea agreement allowed the trial court to impose an enhanced sentence if Tedtaotao materially breached the agreement by committing a new offense before sentencing.

I. FACTUAL AND PROCEDURAL BACKGROUND

[4] Tedtaotao was implicated in multiple armed robberies involving multiple suspects. RA.0690, tab 1 at 4 (Magis.'s Compl., Dec. 11, 2017).² According to the magistrate's complaint, on November 14, 2017, during the early morning hours, three male individuals, two of whom wore masks, entered Hills Market in Yigo. One of the masked men struck the store owner, Jin Ho Kim, with a tire iron. The other two individuals proceeded behind the counter, where one restrained Kim on the floor while the other masked man took the cash register.

court records under Guam Rule of Evidence 201(b)(2)-(c), as they are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *See San Nicolas v. Birn*, 2022 Guam 8 ¶ 3 n.1 (citation omitted).

² Except for the facts underlying Tedtaotao's guilty pleas, we cite to the charging documents in the cases before us and take judicial notice of charging documents in Tedtaotao's other criminal matters "not for the truth of the matters asserted," *see United States v. Jones*, 29 F.3d 1549, 1553 (11th Cir. 1994) (citation omitted), but rather to establish "the fact of their existence" as findings of probable cause to support the allegations made, *see In re N.A.*, 2001 Guam 7 ¶ 58. As discussed below, a finding of probable cause that a new crime was committed is sufficient to breach a plea agreement. Although Tedtaotao raised troubling concerns about police conduct in subsequent cases, Super. Ct. Case No. CF0237-19 (Dec. & Order re: Def.'s Mot. Suppress Evid. at 1-8 (Feb. 24, 2021)), nothing in the record indicates the evidence in the cases before us was obtained in violation of Tedtaotao's constitutional rights.

[5] Two weeks later, two unknown men committed a robbery at the Tamuning Plaza Hotel where they made away with \$320.00 cash after holding the front desk clerk at gunpoint. Record on Appeal [CF0691-17] (“RA.0691”), tab 1 at 4 (Magis.’s Compl., Dec. 11, 2017). Officers reviewing security camera footage of the robbery noticed that one suspect was wearing a red baseball cap with a Guam Seal logo design and bore distinctive tattoos on his left arm. According to police reports, officers familiar with Tedtaotao from prior encounters recognized the robbery suspect’s tattoos as consistent with those of Tedtaotao. A search of Tedtaotao’s name on Instagram revealed an account with a profile picture showing Tedtaotao wearing the same red cap as the suspect in the Tamuning Plaza robbery.

[6] The police obtained a search warrant for the Yigo residence of Tedtaotao’s girlfriend, where surveillance indicated he was staying. They executed the warrant and apprehended Tedtaotao, who admitted his involvement in the Hills Market and Tamuning Plaza robberies. Tedtaotao named his accomplices in the Hills Market robbery as Austin Taman, Damian Becka, and Jax Kosam (aka Jaxdino Kose, among other aliases). Tedtaotao admitted he used the tire iron to assault Mr. Kim and implicated Taman as the getaway driver. Tedtaotao stated he used a toy gun in the Tamuning Plaza robbery and identified Taman as his accomplice and getaway driver. According to Tedtaotao, the toy gun and clothing from the Tamuning Plaza robbery were left inside Taman’s Toyota sedan. Tedtaotao was then transported to Dededo to point out Taman’s and Becka’s residence. Tedtaotao also identified Taman’s vehicle that was used in the two robberies. Tedtaotao was then committed to DOC.

[7] Tedtaotao and Taman were indicted by a grand jury for the Tamuning Plaza robbery; the case was captioned as CF0691-17. A few days later, Tedtaotao, Taman, Kose, and Becka were indicted by a grand jury for the Hills Market robbery, captioned as CF0690-17.

[8] Tedtaotao reached a global plea agreement with the Office of the Attorney General addressing both CF0690-17 and CF0691-17. For his involvement in the Hills Market robbery, he pleaded guilty to Third Degree Robbery (as a Third Degree Felony) and Aggravated Assault (as a Third Degree Felony). For his involvement in the Tamuning Plaza robbery, he pleaded guilty to Third Degree Robbery (as a Third Degree Felony). In exchange for Tedtaotao's cooperation and guilty pleas, the People agreed to dismiss the remaining charges against him, which included multiple deadly-weapon special allegations.

[9] At the heart of this case are the potential terms of imprisonment contemplated in the plea agreement. Tedtaotao agreed to the imposition of five years' imprisonment for Third Degree Robbery (As a Third Degree Felony) as charged in CF0691-17 and ten years' imprisonment for Third Degree Robbery (As a Third Degree Felony) and Aggravated Assault (As a Third Degree Felon) as charged in CF0690-17, with all but three years of these sentences suspended and to be served concurrently. The plea agreement contained a cooperation component, in which Tedtaotao agreed to:

testify truthfully at any Court proceeding, including grand jury, trial or any other hearing to which he is called to testify, specifically concerning his own case or those involving his co-actors:

- i. In CF0691-17, Sebastian Mangarfir Taman (*aka* Austin Taman);
- ii. In CF0690-17, Jaxdino Rafael Kose (*aka* Jaxdino Kose; *aka* Jaydino Kose; *aka* Jack Krisos; *aka* Jaks; *aka* Jax), Sebastian Mangarfir Taman (*aka* Austin Tamar), and Damian Pua Becka; and
- iii. The events that occurred in the attack on Justin Meno in March 2017.

RA.0690, tab 129 at 6 ¶ 8(b) (Plea Agreement, Sept. 12, 2018) (emphasis omitted).

[10] The attack on Justin Meno referenced in the plea agreement was alleged to have occurred at a maximum-security post at DOC, where three inmates were charged with attempted murder

and aggravated assault. Super. Ct. Case No. CF0330-17 (Indictment (Aug. 8, 2017)); *see also* CF0330-17 (Magis.'s Compl. at 3 (June 9, 2017)); CF0330-17 (Superseding Indictment at 1-9 (Aug. 8, 2017)). The case was eventually dismissed without prejudice on the People's motion because the People had yet to receive forensic testing results from the FBI. Super. Ct. Case No. CF0330-17 (Order (Feb. 7, 2018)). The record does not reveal why Tedtaotao's cooperation was sought in the prosecution of those inmates, but he nonetheless agreed to do so, roughly six months after the case had been dismissed.³

[11] Tedtaotao agreed that his cooperation with the Attorney General's Office on the Hills Market robbery, Tamuning Plaza robbery, and Meno attack would begin immediately following his pleas of guilty. RA.0690, tab 129 at 6 ¶ 8(d) (Plea Agreement, Sept. 12, 2018). Tedtaotao agreed to continue his sentencing until one of three things occurred: (1) the People moved for sentencing, (2) the People certified that the case against his co-actors and the attackers of Justin Meno had been disposed of, or (3) the People certified that his cooperation had been performed. *See id.* at 6-7 ¶ 8(e). The agreement further provided:

The Defendant will remain released until after his cooperation is completed. If Defendant commits a new offense, tests positive for ANY drug or alcohol or does not appear to the Probation Office or to Court as requested, then Defendant will serve five (5) years incarceration if he cooperates later or ten (10) years incarceration if he does not cooperate (either by refusal to testify, testifying differently than what he has previously stated is true, or not testifying due to his disappearance)

Id. at 8 ¶ 9(e) (emphases omitted). Finally, the plea agreement stipulated that the agreement would not bind the People "should the Defendant be charged with or commit a crime between . . . entrance of this agreement and the time for sentencing of this case." *Id.* at 13.

³ Superior Court Case No. CF0330-17 was dismissed on February 7, 2018, and Tedtaotao entered into a cooperation plea agreement on August 3, 2018.

[12] Tedtaotao was released from custody on August 6, 2018. The next day, the Superior Court accepted Tedtaotao’s plea on the record, stating that sentencing would occur after he cooperated. The Tamuning Plaza robbery case (CF0691-17) was disposed of at the time of Tedtaotao’s plea, as his co-defendant Taman had previously entered a guilty plea. The Hills Market robbery (CF0690-17) was not disposed of until February 5, 2019, when Kose entered his guilty plea.⁴ The disposition of the final case tied to Tedtaotao’s cooperation agreement—the prosecution against the attackers of Justin Meno—remained unclear because the case had been dismissed without prejudice and could have been recharged.

[13] On February 27, 2019, while Tedtaotao was still on pre-sentencing release, police responded to a theft complaint in Humåtak. Super. Ct. Case No. CF0118-19 (Magis.’s Compl. at 3 (Mar. 1, 2019)). A tourist reported seeing a man steal his shoulder bag from the back seat of his unlocked, parked car at the Fort Soledad overlook. The suspect left the scene in a car driven by another man. When police responded to the call, they found Tedtaotao and another man in the getaway vehicle near a residence in Humåtak. Tedtaotao and his co-defendant both spoke with police and blamed the theft on the other. Tedtaotao was indicted by a grand jury for Burglary to a Motor Vehicle (as a Second Degree Felony), Criminal Trespass (as a Misdemeanor), and Theft (as a Petty Misdemeanor). Super. Ct. Case No. CF0118-19 (Indictment (Mar. 11, 2019)).⁵ However, Tedtaotao avoided apprehension on these charges for over a month—until April 18, 2019, when he was picked up in relation to a separate complaint.

[14] On that day, GPD responded to an armed robbery call in East Hagåtña involving two Korean tourists. Super. Ct. Case No. CF0237-19 (Magis.’s Compl. at 6 (Apr. 20, 2019)); CF0237-

⁴ Becka pleaded guilty before Tedtaotao on July 26, 2018.

⁵ Tedtaotao would eventually plead guilty to Criminal Trespass (As a Misdemeanor) for this criminal episode. Super. Ct. Case Nos. CF0118-19, CF0237-19 (Plea Agreement (Jan. 7, 2022)).

19 (Dec. & Order re: Def.'s Mot. Suppress Evid. at 1 (Feb. 24, 2021)). Through a translator, the tourists provided a description of the perpetrator and his silver Mitsubishi Lancer and gave police a photo with a partial license plate number. Later that day, GPD received a call relating to a burglary of a motor vehicle at the Nikko Hotel in Tumon. The victim of the burglary reported that one of the windows of his vehicle was broken and that two hats and a water bottle were taken from the vehicle interior. Super. Ct. Case No. CF0237-19 (Magis.'s Compl. at 6 (Apr. 20, 2019)). Not long after, GPD learned that the Lancer—which GPD discovered had been reported as stolen from National Car Rental—was on the road in Tamuning. Police effectuated a traffic stop and found Tedtaotao inside the Lancer. When interviewed, Tedtaotao admitted taking money from the two men at gunpoint in East Hagåtña and breaking into the car at the Nikko Hotel.⁶

[15] The People filed a sentencing memorandum in CF0690-17 and CF0691-17, arguing that since Tedtaotao committed new offenses, he should be sentenced to five years under paragraph 9(e) of the plea agreement. Tedtaotao countered that adding two extra years to his sentence would violate double jeopardy. The Superior Court ruled that enforcing the plea agreement would not violate double jeopardy. RA.0690, tab 247 at 1-5 (Dec. & Order (Provision in Plea Agreement), June 6, 2022). The court found that Tedtaotao's cooperation agreement ended on February 5, 2019, when the last of Tedtaotao's co-defendants pleaded guilty, though it incorrectly found that Tedtaotao committed the East Hagåtña and Nikko Hotel vehicle robberies on September 27, 2018. *See id.* at 2. Later that month, Tedtaotao submitted a copy of his plea agreement in the East Hagåtña and Nikko Hotel case that illustrated the crimes did not occur until after Kose pleaded

⁶ The Superior Court later suppressed the tourists' identification of Tedtaotao and dismissed the robbery charge because the pretrial identification procedures used by GPD were unduly suggestive and violated Tedtaotao's due process rights. *See* Super. Ct. Case No. CF0237-19 (Dec. & Order re: Def.'s Mot. Suppress Evid. at 3-4 (Feb. 24, 2021)). The trial court denied the motion to suppress Tedtaotao's custodial statements and confession. *Id.* at 5-7. After this decision, Tedtaotao pleaded guilty to Theft by Receiving (as a Third-Degree Felony) for his possession of the stolen rental car, which resolved the Hagåtña and Nikko Hotel cases. Super. Ct. Case Nos. CF0118-19, CF0237-19 (Plea Agreement (Jan. 7, 2022)).

guilty, submitting that “it would appear that defendant Tedtaotao did not breach his plea agreement in CF690 and 691-17 after all.” RA.0690, tab 249 at 1 (Submission re Sentencing, June 20, 2022).

The day after, Tedtaotao submitted a memorandum to the trial court arguing that because the East Hagåtña and Nikko Hotel case occurred on April 18, 2019, and the Humåtak theft occurred on February 27, 2019, he had not violated his plea agreement.

[16] The People argued that Tedtaotao’s cooperation in prosecuting the attack on Justin Meno had not concluded when the new offenses were committed. RA.0690, tab 252 at 2 (People’s Sentencing Info., June 27, 2022). Without citation to authority, they argued that his cooperation did not conclude until the statute of limitations on aggravated assault expired on March 29, 2020, because the People could have recharged the defendants up to that point. *Id.* Tedtaotao responded that the People prevented him from cooperating in the prosecution of the attack on Meno because of their inability to proceed to trial. RA.0690, tab 255 (Resp. People’s Sentencing Mem., July 11, 2022).

[17] At his sentencing hearing, the court addressed Tedtaotao, stating:

[B]oth sides, yourself and the government, had bargained and exchanged . . . for something. You knew that one of the obligations was that you refrain from committing a crime before sentencing occurred, . . . and that you’re supposed to be cooperating in the Justin Meno case

Assuming that the government was correct, and they reviewed it and decided not to charge, . . . it should’ve ended sooner, and one can say that the thing didn’t happen, but the government . . . bargained for the fact that it didn’t want you to commit a crime while this thing was pending.

Transcript at 6 (Sentencing Hr’g, July 18, 2022). In pronouncing the sentence, the court additionally told Tedtaotao that “pursuant to the agreement that the parties had signed . . . , the

Court is kind of stuck, and orders that you serve your time of incarceration of five years at the Department of Corrections.”⁷ *Id.* at 8.

[18] The next day, Tedtaotao filed a motion for reconsideration, claiming that at the sentencing hearing, the People revealed that they had dismissed the case against the attackers of Justin Meno because the medical examiner had determined the defendants were not the cause in fact of Meno’s death. The People denied that was the reason the case was dismissed. Judgment was entered against Tedtaotao, and he was sentenced to five years’ imprisonment. Tedtaotao timely appealed.

II. JURISDICTION

[19] This court has jurisdiction to hear appeals from final judgments of the Superior Court. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw current through Pub. L. 118-22 (2023)); 7 GCA §§ 3107, 3108(a) (2005); 8 GCA §§ 130.10, 130.15(a) (2005).

III. STANDARD OF REVIEW

[20] The issue of whether a plea agreement has been breached is reviewed *de novo*. *People v. Camacho*, 2016 Guam 13 ¶ 17. This court reviews the legality of a sentence *de novo*. *People v. Moses*, 2007 Guam 5 ¶ 10. Although the People argue that Tedtaotao raises the issue of when his “cooperation expired” for the first time on appeal, Appellee’s Br. at 11 (Mar. 7, 2023), this issue was preserved in the sentencing memoranda he filed in the trial court, *See* RA.0690, tab 251 (Mem. Re Date Def.’s Offenses); RA.0690, tab 255 (Resp. People’s Sentencing Mem.). An issue raised

⁷ We note that when a trial court accepts a plea agreement, it is not necessarily bound to the sentencing terms; it can impose the agreed-upon sentence, or it can impose something more favorable to the defendant. *See* 8 GCA § 60.80(c) (2005); *People v. Superior Court (Chiguina)*, 2003 Guam 11 ¶¶ 10-11. If the court’s statement that it was “kind of stuck” reflected an understanding that the agreement precluded the court from imposing a more favorable sentence than five years, this was in error. If the court found that Tedtaotao breached the agreement, it could sentence him up to five years pursuant to the agreement, but it still could have accepted the plea and given him a more favorable sentence. Yet even if we were to assume this were a misstatement of the law—not an expression of empathy prior to imposing what the court felt was an appropriate sentence—it does not rise to the level of an abuse of discretion because the court imposed a lawful sentence. *See People v. Bosi*, 2022 Guam 15 ¶ 66 (“On abuse of discretion review, an appellate court does not review whether an alternative course of action was available, but only whether the trial court’s decision was allowable.”).

in a sentencing memorandum is preserved for appeal. *See, e.g., United States v. W. Coast Aluminum Heat Treating Co.*, 265 F.3d 986, 990 (9th Cir. 2001) (“West Coast preserved its objection to the calculation of the loss in its sentencing memorandum submitted to the probation officer, and thus has preserved this issue for appeal.”).

IV. ANALYSIS

[21] Resolution of this appeal turns on our interpretation of Tedtaotao’s plea agreement. We have recently affirmed that “principles of contract law are useful in analyzing plea agreements, even though such principles cannot always be rigidly applied in the criminal law context.” *People v. Piyelit*, 2022 Guam 16 ¶ 43 (quoting *People v. Faisao*, 2018 Guam 26 ¶ 15). Tedtaotao advocates for a rigid application of contract-damages principles that do not aptly fit in the criminal law context. But the People, in contrast, advocate an unreasonable and forced interpretation of the plea agreement. *Cf. Yasuda Fire & Marine Ins. Co. v. Heights Enters.*, 1998 Guam 5 ¶ 14 (declining to adopt unreasonable and forced interpretation of a contract). Instead, we interpret the plea agreement to give effect to what Tedtaotao reasonably understood he was agreeing to when the plea was entered, taking the entire agreement together as a whole. *Piyelit*, 2022 Guam 16 ¶ 43; *see also Cruz v. Cruz*, 2022 Guam 7 ¶ 24 (relative to interpretation of marital settlement agreement); *People v. Camacho*, 2009 Guam 6 ¶ 48 (Maraman, J., concurring).

A. Interpreted as a Whole, the Agreement Can Be Reasonably Understood to Subject Tedtaotao to an Increased Sentence if he Committed a New Offense before Sentencing

[22] A plea agreement is a contract between the People and the defendant—a result of bargaining between the two parties, regulated under Guam law. *Camacho*, 2016 Guam 13 ¶ 20; 8 GCA § 60.80 (2005). In exchange for a plea of guilty, the People may agree to move for dismissal of other charges and/or recommend imposition of a particular sentence. *Camacho*, 2016 Guam 13 ¶ 20 (citing 8 GCA § 60.80(a)). “When a guilty plea is obtained in exchange for an agreement by

the prosecutor, the agreement must be fulfilled.” *Id.* ¶ 17 (citing *Santobello v. New York*, 404 U.S. 257, 262 (1971)).

[23] “[A]lthough the law of obligations (contracts) can be used by analogy to analyze the legal relations of the parties to the plea bargain, the validity of the plea bargain and the remedies for breach of it are controlled by criminal substantive and procedural law.” *Naron v. Bitanga*, 1999 Guam 21 ¶ 9 (quoting *Lewis v. State*, 602 So. 2d 68, 75 (La. Ct. App. 1992)). This court first considers the plain language of the agreement and, if the language is clear, holds the parties to the obvious meaning of the agreement. *Faisao*, 2018 Guam 26 ¶ 15. Any ambiguities, however, should be read against the People, *id.*, recognizing “that prosecutors’ bargaining power generally exceeds that of defendants and that the government typically drafts such agreements.” *Camacho*, 2009 Guam 6 ¶ 15 (citation omitted).

[24] Under general contract-interpretation principles, a contract is interpreted as a whole and in a manner that harmonizes all its provisions. *DFS Guam L.P. v. A.B. Won Pat Int’l Airport Auth.*, 2020 Guam 20 ¶ 137. This court “will not entertain a strained interpretation of a contract, and preference should be given to reasonable interpretations of a contract rather than an unreasonable interpretation.” *HRC Guam Co. v. Bayview II L.L.C.*, 2017 Guam 25 ¶ 60. Under this court’s rules of interpretation, a plea agreement should be read as a whole. *See, e.g., Port Auth. of Guam v. Civ. Serv. Comm’n (Javelosa)*, 2018 Guam 9 ¶ 19; *Torres v. Torres*, 2005 Guam 22 ¶ 20; *Camacho*, 2009 Guam 6 ¶ 48 (Maraman, J., concurring). “When determining whether a sentence complies with the terms of a plea agreement, the court must look to what was reasonably understood by the defendant when the plea was entered.” *Piyelit*, 2022 Guam 16 ¶ 43 (citing *United States v. Fernandez*, 960 F.2d 771, 772 (9th Cir. 1992) (per curiam)).

[25] A reasonable defendant in Tedtaotao’s place would have understood that the agreement was crafted so that Tedtaotao would be subject to an increased sentence if he breached the agreement in certain ways before sentencing, including by failing to cooperate, committing new offenses, using drugs, or failing to check in with the probation office.

[26] The People’s reading of the plea agreement interprets the provision governing the commission of new offenses in complete isolation. *Compare* Appellee’s Br. at 14-15 (“[The plea agreement] simply states that he is subject to an increased sentence if he ‘commits a new crime,’ and whether that is five- or ten- years’ imprisonment depends on whether he cooperated.”), *with Javelosa*, 2018 Guam 9 ¶ 19 (“Words or phrases cannot ‘be interpreted in isolation from the’ relevant context in which they appear.”), *and Torres*, 2005 Guam 22 ¶ 20 (refusing to read a term in an instrument in isolation, because “we consider this term ‘in the context of both the instrument containing it as well as the circumstances of the entire case’”).⁸ Tedtaotao is correct that the duration of his cooperation was tied to his sentencing and release. The agreement stated that “[t]he Defendant will remain released until after his cooperation is completed.” RA.0690, tab 129 at 8 ¶ 9(e) (Plea Agreement, Sept. 12, 2018) (emphasis omitted). But this is where our analysis diverges.

⁸ Before the trial court, the People suggested an arbitrary cut-off of the statute of limitations for a lesser included offense for when a defendant’s “cooperation is completed.” RA.0690, tab 252 at 2 (People’s Sentencing Info., June 27, 2022). Even there, they acknowledged that it would be unfair to hold a defendant to a cooperation agreement indefinitely, as with attempted murder when there is no statute of limitations. The People have abandoned this interpretation of the plea agreement on appeal and state the issue is irrelevant. Appellee’s Br. at 11-12. We cannot say that the duration of a cooperation agreement is never relevant. Such an interpretation could open the door to abuses in future plea deals; if contained in a cooperation agreement, the threat of additional jail time for commission of a new offense could be held over a defendant’s head indefinitely, despite the fact Guam law sets an upper limit on the period for suspending a sentence. *See People v. Anson*, 1998 Guam 11 ¶ 7 (stating that the period of suspension or probation may not exceed five years for a felony). Yet, because we affirm the decision of the trial court by interpreting the agreement as a whole, we need not reach the issue of whether there are any temporal limits on cooperation agreements. *See Hemlani v. Hemlani*, 2015 Guam 16 ¶ 33 (“As a general appellate principle, a court will not address issues unnecessary to the resolution of the case before it.”). We do, however, reiterate that we are “especially wary” of construing clauses so broadly that it would relieve the People from the duty of good faith and fair dealing implicit in an agreement as a whole. *See Cristobal v. Siegel*, 2018 Guam 29 ¶ 17.

[27] Under the agreement, Tedtaotao’s sentencing would be continued until the People affirmatively took actions to either: (1) move for sentencing, (2) certify that the cases against his co-actors and the case against the attackers of Justin Meno had been disposed of, or (3) certify that cooperation had been performed. *Id.* at 6-7 ¶ 8.e. The agreement would not bind the People if Tedtaotao committed a crime between entry of the plea and “the time for sentencing of this case.” *Id.* at 13 ¶ 20.

[28] Tedtaotao argues that when his plea was entered, he understood the extent of his future cooperation to be limited to securing the conviction of Kose, who entered his guilty plea on February 5, 2019. *See, e.g.*, Appellant’s Br. at 10-13 (Jan. 4, 2023); Appellant’s Reply Br. at 2-4 (Mar. 20, 2023); RA.0690, tab 155 (Plea Agreement, Feb. 21, 2019). Tedtaotao’s position is that once Kose pleaded guilty and Tedtaotao believed his cooperation was completed, future criminal allegations (including arrests or convictions) would not affect his plea agreement. This position overlooks one key fact: Tedtaotao could be liable for breaching the plea agreement until he was sentenced. A party cannot reject one obligation under a contract and still enjoy the benefits of that same contract. *Faisao*, 2018 Guam 26 ¶ 15 (“[u]nder a contract theory, the plea agreement is a bargained-for exchange between the People and the defendant” where both parties should receive the benefit of their bargain); *see also* Williston on Contracts § 78:29 (4th ed. (May 2023 Update)) (“A trustee or debtor in possession may not reject (i.e., breach) one obligation under a contract and still enjoy the benefits of that same contract. . . . That rule is not in the bankruptcy code; it simply follows from the principle that a breach by one party to a contract generally excuses performance by the other.” (alteration in original) (quoting *In re Comdisco, Inc.*, 270 B.R. 909, 911 (Bank. N.D. Ill. 2001))). Tedtaotao could not enjoy the benefits of being released from confinement, having additional charges dismissed, and the promise his sentences would run concurrently while also

rejecting the obligation to avoid committing new offenses. *Cf. People v. Mallo*, 2008 Guam 23 ¶ 39 (“The People retain the material and substantial benefit of [the defendant’s] guilty conviction and the resulting life sentence. The People also retain the benefit of avoiding the time-consuming and resource-intensive preparation for trial.”). Tedtaotao’s arguments about the importance of when his cooperation was completed are misplaced because they overlook the overriding importance of the “time for sentencing.” Although the cases being disposed and the performance of his cooperation were two actions that could trigger sentencing—thus ending the period when the agreement could be breached—they both required the People’s certification. And Tedtaotao does not argue that any such certification was made.

[29] Although we construe the ambiguity of what is perhaps a poorly drafted agreement against the People, when reading these provisions in harmony, Tedtaotao was liable for breaching the agreement until his sentencing. When the provisions of the agreement are taken as a whole, they show that, until sentencing occurred, Tedtaotao could breach the agreement by committing a new offense. When his plea was entered, Tedtaotao could have subjectively believed that his “cooperation was complete,” but it was also reasonably understood that until the People began the sentencing process—such as certifying that his cooperation was complete or all the cases had been disposed of—he would remain liable for breaching the agreement. As Tedtaotao committed a new offense before the People moved for sentencing, the trial court properly found him in breach of his agreement.

1. Proper remedy for a defendant’s breach of a plea agreement

[30] “[N]ot all conduct that deviates from the precise terms of a plea agreement constitutes a breach that warrants a remedy[.]” *Mallo*, 2008 Guam 23 ¶ 38 (quoting *State v. Deilke*, 682 N.W.2d 945, 951 (Wis. 2004)). The party alleging a breach must demonstrate by clear and convincing

evidence not just that a breach occurred, but that the breach was material and substantial. *Id.* “[I]t is generally accepted that ‘when a defendant breaches his plea agreement, the [g]overnment has the option to either seek specific performance of the agreement or treat it as unenforceable’ (at least absent language in the plea agreement specifying fewer or other remedies).” *United States v. Williams*, 510 F.3d 416, 427 (3d Cir. 2007) (alterations in original) (quoting 5 Wayne R. LaFave et al., *Criminal Procedure* § 21.2(e), at 60 (2d ed. Supp. 2007)). And a plea agreement may specify other possible remedies for the defendant’s breach. 5 Wayne R. LaFave et al., *Criminal Procedure* § 21.2(e) (4th ed. (Dec. 2023 Update)); *cf. Mallo*, 2008 Guam 23 ¶ 37 (“Because Mallo is entitled to his credit for time served and has not waived it, the remedy is to credit the time to his sentence.”); *Unified Int. v. PacAir Props., Inc.*, 2017 Guam 9 ¶ 32 (“[T]he terms of a contract are reasonably certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy.” (quoting Restatement (Second) of Contracts § 33 (1979))); *Bank of Guam v. Del Priore*, 2007 Guam 7 ¶ 33 (“[T]he Uniform Commercial Code of Guam allows the parties by agreement to determine the manner in which the elected remedy is to be exercised so long as the agreed terms are not manifestly unreasonable.”).

[31] The People, as the party arguing the breach, have shown that Tedtaotao’s breach was material and substantial. Apart from allowing the People to treat the agreement as unenforceable, the agreement in this case specified “other possible remedies” for this type of breach. When interpreted as a whole, the agreement allowed for the trial court to enhance the bargained-for sentence when a new offense was committed before sentencing.

[32] “An appellate court may affirm the judgment of a lower court on any ground supported by the record,” *People v. San Nicolas*, 2001 Guam 4 ¶ 29, and as such, we affirm the imposed sentence

of five years because the new offense occurred before sentencing, rather than because it occurred before Tedtaotao's cooperation was complete.

B. Tedtaotao's Argument about Contract Damages Is Misplaced

[33] Tedtaotao raises the questionable proposition that “[o]ne thing is very clear: the People suffered no *contract* damages as a result of Tedtaotao's commission of those newer crimes. . . . The point here is Tedtaotao did not contract-actionably violate his agreement to cooperate.” Appellant's Br. at 7-8. Yet this overlooks our recent admonition that principles of contract law “cannot always be rigidly applied in the criminal law context.” *Piyelit*, 2022 Guam 16 ¶ 43 (quoting *Faisao*, 2018 Guam 26 ¶ 15). Although material breach and damages are essential elements of an action for breach of contract, in the context of plea agreements, materiality alone is key. *See Mallo*, 2008 Guam 23 ¶ 38. As Judge Posner has written:

[T]he only question is whether the breach was material. In contract law, although a breach is a breach, if it causes no harm then all that the other party is entitled to by way of remedy is nominal damages, which means, as a practical matter, no relief. The cases reach the same result when the breach of a plea agreement is, in the court's view, insubstantial, immaterial, technical—in short, minor—or cured on the spot and in either case undeserving of substantial relief such as resentencing or withdrawal of a guilty plea.

United States v. Diaz-Jimenez, 622 F.3d 692, 694 (7th Cir. 2010) (citations omitted).

[34] The actions of Tedtaotao while he was on pre-sentencing release—including criminal trespass and theft by receiving—were not insubstantial, immaterial, technical, or minor.⁹ *See id.* When a plea agreement contains prohibitions on committing additional crimes, courts do not

⁹ Although Tedtaotao's global plea agreement dismissed charges relating to some allegations, a promise to commit no new crimes does not need a conviction to be enforceable. *See, e.g., State v. Reed*, 2013 WI App 132, ¶ 9, 351 Wis. 2d 517, 839 N.W.2d 877 (“We agree with the circuit court that it would be unreasonable to conclude that the promise to commit no new crimes requires a conviction to be enforceable. The State would not have bargained for a condition that would require the whole panoply of criminal proceedings, not to mention the delay, before the parties could determine if [the defendant] had fulfilled his part of the plea agreement.”). The charging of new crimes and probable cause findings bear directly on sentencing. *See id.*; *see also People v. Castro*, 2013 Guam 20 ¶ 62 (“A sentencing court must be permitted to consider any and all information that reasonably might bear on the proper sentence for a particular defendant . . .”).

hesitate to find such breaches material.¹⁰ See, e.g., *State v. Reed*, 2013 WI App 132, ¶¶ 7-10, 351 Wis. 2d 517, 839 N.W.2d 877.

V. CONCLUSION

[35] When interpreted as a whole, Tedtaotao’s plea agreement can be reasonably understood to subject him to an increased sentence because he committed a new offense after he entered the plea but before sentencing. Tedtaotao’s argument about contract damages is misplaced because contract principles cannot be rigidly applied in this context. The judgment of the trial court is **AFFIRMED**.

/s/

F. PHILIP CARBULLIDO
Associate Justice

/s/

KATHERINE A. MARAMAN
Associate Justice

/s/

ROBERT J. TORRES
Chief Justice

¹⁰ The argument that Tedtaotao’s other, subsequent crimes damaged society at large but not the government misses the point—the Office of the Attorney General represents the people of Guam. *People v. San Nicolas*, 1999 Guam 19 ¶ 51 (“The People attempt to zealously represent the people of Guam”); *Unified Int. v. PacAir Props., Inc.*, 2017 Guam 9 ¶ 46 (“[A]lthough a person may be a victim of a criminal act, the ultimate party aggrieved in a criminal prosecution is the public at large, as represented by the state.”); cf. *State v. Whitman*, 788 S.W.2d 328, 335 (Mo. Ct. App. 1990) (“[A] prosecuting attorney in a criminal case represents the people and it is his duty to be impartial His obligation is not simply to obtain a conviction but to see that justice is done and that the accused gets a fair trial.” (citations omitted)). Harm to individual victims and to society at large inherently harms the people of Guam.