FOR PUBLICATION

Appeal No. 02-003-GA

IN THE SUPREME COURT OF THE

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellant,

v.

GLEN D. PALACIOS,
Defendant-Appellee.

OPINION

Cite as: *Commonwealth v. Palacios*, 2003 MP 6

Criminal Case No. 01-0346-CR

Argued and submitted on November 15, 2002
Decided May 1, 2003

For the Commonwealth of the
Northern Mariana Islands
Plaintiff-Appellant:

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BEFORE: Miguel S. DEMAPAN, Chief Justice; Alexandro C. CASTRO, Associate Justice; Pedro M. ATALIG, Justice *Pro Tempore*.

DEMAPAN, Chief Justice:

¶1 The Commonwealth of the Northern Mariana Islands ("Commonwealth" or "Prosecution") timely appeals the trial court's dismissal with prejudice of charges against Glen D. Palacios ("Palacios"). We have jurisdiction pursuant to Article IV, Section 3 of the Constitution and 1 CMC § 3102(a). We affirm.

ISSUE PRESENTED AND STANDARD OF REVIEW

¶2 The issue presented is whether the trial court committed reversible error when it dismissed, with prejudice, the charges against a defendant on the day of trial when the Prosecution failed to appear. The decision to dismiss an information is reviewed for an abuse of discretion. *Commonwealth v. Campbell*, 4 N.M.I. 11, 15 (1993). We will find an abuse of discretion if the trial court "based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 79, 84 (1992).

FACTUAL AND PROCEDURAL BACKGROUND[1]

¶3 On August 6, 2001, the Commonwealth filed an Information charging Palacios with violations of 6 CMC § 1202(a) (Assault and Battery) and 6 CMC § 3101(a) (Disturbing the Peace). Palacios was arraigned on September 10, 2001, and the case was set for trial, which was to be held on February 6, 2002.[2]

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[1] Unless otherwise noted, the facts are taken from the Appellant's Opening Brief.

[2] The trial was to begin at 9:00 a.m. Excerpts of Record ("E.R.") at 2.

¶4 Sometime prior to the trial,[3] counsel for Palacios[4] prepared a document entitled "Stipulated Motion to Continue Bench Trial," signed it and delivered it to the Assistant Attorney General assigned to try the case. This document also contained a proposed order which, if signed by the trial court,[5] would have continued the trial to a later date. Excerpts of Record ("E.R.") at 2. The joint motion and proposed order were not filed until February 6, 2002, the date the case was to be tried.[6]

¶5 On February 6, 2002, the trial judge called the case. Palacios was present and represented by counsel. The Assistant Attorney General representing the Commonwealth did not appear. After some initial confusion as to whether the case was before the correct judge and a brief recess, *see* E.R. at 8-10, the following exchange took place:

> Court: Please be seated. Okay, I got it. This is a case that was filed in August of 2001, Mr. Elameto, and obviously pursuant to the calendared, calendaring order that existed at the time, this case is a case that is suppose[d] to be in front of this Court, this case originally was set for status conference on October 15, 2001. On October 15, 2001, the government and the Public Defender set this matter for trial for this morning, February 6, 2002, and this case was never continued. What is troubling about this case is that, as I see it, the setting of this case for trial this morning is correct. This is the date, the appropriate date for this case to be set for trial this morning. What is troubling here is there was a filing of a, there was supposedly a submission, not a filing but a submission of a stipulation to continue this bench trial. Were you informed to continue this bench trial Mr. Palacios?
>
> A: No sir.
>
> Court: See, that is the troubling part about how this

[3] The motion was dated January 31, 2002.

[4] Assistant Public Defender Douglas W. Rhodes first represented Palacios and signed the joint motion. On the date of the trial, Assistant Public Defender Sean Elameto represented Palacios. E.R. at 9.

[5] There apparently was some confusion as to which court was to try the case, as counsel intended that a different judge would sign the order. *See* E.R. at 3.

[6] The motion was filed with the Clerk of the Superior Court at 8:45 in the morning, E.R. at 2, a mere fifteen (15) minutes prior to the scheduled commencement of the trial.

A: I'm sorry. Prior to yesterday, no sir. Yesterday when I spoke to Mr. Rhodes, he mentioned that we are asking for a continuance.

Court: Was there a court order that has continued this case to your knowledge?

A: No sir.

Court: No right?

A: No sir.

Court: See, that is the troubling part. Nobody has ever followed up on this submitted motion to continue. And here is the thing Mr. Elameto, and this is something that you might want to remember, you do not stipulate to continue bench trials. You file a motion to continue bench trials because the parties, the attorneys are not the ones to be calendaring the court's calendar. You know this is just something that has been going for a long, long time and I do not know when the attorneys are going to learn, particularly your office Mr. Elameto. Because this is consistent with what has been happening for so long already and I am going to tell you right now that for whatever reason that this case was submitted in this fashion, I am going to dismiss this case, all right. If the government wants to complain about it, that is their problem. So Mr. Palacios, you are excused. Thank you.

E.R. at 10-11. The trial court then issued a written order dismissing the two charges with prejudice.[7]

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[7] In this order, the trial court stated:

> [i]n the present matter, the court did not sign any order granting a motion for continuance. As such, the matter was properly called before the court on February 6, 2002, at 9:00 a.m. Defendant appeared as ordered. Counsel for the respective parties, however, deemed that it was not necessary to appear. Counsel for the Commonwealth, in particular, even failed to have a representative appear to explain her absence. Accordingly, given the Commonwealth's failure to appear and prosecute this matter, it is hereby **DISMISSED WITH PREJUDICE**.

¶6 The Commonwealth filed a motion to reinstate the proceedings on February 8, 2002, and a hearing was held on February 25, 2002.[8] The trial court denied the motion and the Commonwealth timely appealed on March 6, 2002.

ANALYSIS

¶7 The Commonwealth argues that a reversal of the trial court's dismissal of the charges is proper because the Commonwealth was not afforded notice that the trial court would dismiss the charges with prejudice and because Palacios was in no way prejudiced by the failure of the Prosecution to appear for trial. Palacios argues that the trial court possesses the inherent authority to dismiss a case with prejudice when the Prosecution fails to appear for trial.

¶8 The resolution of this appeal centers on Commonwealth Rule of Criminal Procedure 48(b) and the trial court's inherent supervisory authority. Commonwealth Rule of Criminal Procedure 48(b) reads: "[i]f there is unnecessary delay in filing an information against a defendant who has been held to answer, or if there is unnecessary delay in bringing a defendant to trial, the court may dismiss the information or complaint." Com. R. Crim. P. 48(b). Rule 48(b) does not, on its face, address whether the dismissal shall be with prejudice, and we have never decided the issue.[9]

[8] At this hearing, the Palacios' counsel took no position on the motion:

> Judge, as the court is aware, the record will show that we did not make a motion to dismiss. That would not have been in good faith inasmuch as our office had stipulated and requested a continuance because the attorney who was primarily responsible for the case had a matter that required his personal attention before the Supreme Court. But we did send an attorney to stand up and handle the case to the extent that the court deemed it necessary. But we can't, in good faith, ask for the dismissal when we had requested the continuance because of the urgent absence of the attorney. So the court *sua sponte* ordered dismissal, so we take no position on this rehearing matter and we leave it to Your Honor's discretion to decide as you see fit.

E.R. at 12.

[9] We have, however, discussed the trial court's authority to dismiss, without prejudice, charges on grounds that the government failed to provide exculpatory evidence, as required under *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). In *Commonwealth v. Campbell*, 4 N.M.I. 11 (1993), we stated: "[t]he law is clear that dismissal of an indictment is an 'extraordinary remedy.' While a court has the power to

¶9 The Commonwealth Rule is substantially similar to Federal Rule of Criminal Procedure 48(b);[10] they differ only in the fact that the federal rule also encompasses delays in presenting charges to a grand jury while the Commonwealth rule does not. *Compare* FED. R. CRIM. P. 48(b) *with* Com. R. Crim. P. 48(b). As such, it is appropriate to consult the interpretation of the counterpart federal rule,[11] but the interpretations by the federal courts of the federal procedural rule are not binding on us as we interpret Commonwealth rules.

¶10 The Advisory Committee Notes for Federal Rule of Criminal Procedure 48(b) state that the rule merely reflects the inherent authority of the court to dismiss a case for want of prosecution.[12] Pursuant to Rule 48(b), a federal court may dismiss a case for want of prosecution even if the delay does not rise to the level of a violation of the defendant's right to a speedy trial under the Sixth Amendment. *United States v. Hattrup*, 763 F.2d 376, 377 (9th Cir. 1985).[13]

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dismiss pursuant to its supervisory powers, it is a disfavored remedy." *Id*. at 18 (citations omitted).

[10] Prior to a stylistic amendment on December 1, 2002, Federal Rule of Criminal Procedure 48(b) read:

> If there is unnecessary delay in presenting the charge to a grand jury or in filing an information against a defendant who has been held to answer to the district court, or if there is unnecessary delay in bringing a defendant to trial, the court may dismiss the indictment, information or complaint.

FED. R. CRIM. P. 48(b) (2001).

[11] "We deem it appropriate to consult interpretation of counterpart federal rules in interpreting commonwealth procedural rules. The interpretation of such rules can be highly persuasive." *Tudela v. Marianas Pub. Land Corp.*, 1 N.M.I. 179, 184 (1990) (citations omitted).

[12] "This rule is a restatement of the inherent power of the court to dismiss a case for want of prosecution. *Ex parte Altman*, 34 F. Supp. 106, S.D.Cal." FED. R. CRIM. P. 48(b), Advisory Committee Note to Subdivision (b).

[13] Defendants are also guaranteed a speedy trial by the Constitution of the Commonwealth of the Northern Mariana Islands. Section 4(d) of Article I reads, "[t]here shall be a speedy and public trial." N.M.I. Const. art. I, § 4(d). Palacios has not claimed that his right to a speedy trial (under either the Commonwealth or United States Constitutions) has been violated.

¶11 However, a judge does not enjoy unfettered discretion to dismiss cases under FED. R. CRIM. P. 48(b). "[W]e have emphasized that, although the rule confers discretion upon the district judge, a Rule 48(b) dismissal should be imposed only in extreme circumstances." *United States v. Jiang*, 214 F.3d 1099, 1101 (9th Cir. 2000) (internal quotations omitted). Further, "[t]hat is especially true when a dismissal is with prejudice. *Id.* (*citing United States v. Gatto*, 763 F.2d 1040, 1050 (9th Cir. 1985)). A judge must exercise discretion when dismissing a case with prejudice because such dismissal is a "harsh remedy." *Hattrup*, 763 F.2d at 378.

¶12 This "harsh remedy" should be used sparingly,[14] "[f]or in dismissing an indictment with prejudice, the court allows its interest in the orderly administration of justice to override the interests of victims and the public interest in the enforcement of the criminal law." *United States v. Goodson*, 204 F.3d. 508, 514 (4th Cir. 2000) (*citing United States v. Derrick*, 163 F.3d 799, 807 (4th Cir. 1998) ("The dismissal of an indictment altogether clearly thwarts the public's interest in the enforcement of its criminal laws in an even more profound and lasting way than the requirement of a retrial")).

¶13 "Because of the sanction's severity, [federal courts] have held that a district court abuses its discretion if it imposes the sanction of dismissal under Rule 48(b) without first satisfying the requirements of 'caution' and 'forewarning.'" *United States v. Sears, Roebuck and Co.*, 877 F.2d 734, 737-38 (9th Cir. 1989). As such, "[a] Rule 48(b) dismissal with prejudice is proper only after a 'forewarning of the consequences' of

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[14] "In general dismissal under Rule 48(b) is appropriate only where there is 'delay that is "purposeful or oppressive."'" *United States v. Sears, Roebuck and Co.*, 877 F.2d 734, 739 (9th Cir. 1989) (*quoting* 3A WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE § 814, at 219 (citation omitted)).

further delay." *Id.* at 738 (*citing United States v. Gilbert*, 813 F.2d 1523, 1531 (9th Cir. 1987)). The requirement that the court exercise caution "is satisfied where the reason for dismissal is prosecutorial misconduct *and demonstrable prejudice or substantial evidence thereof*." *Id.* (quotation and citation omitted, emphasis added).[15]

¶14 It should be noted that the aforementioned authority arose in dissimilar contexts than the facts of the instant appeal. In each of the cases, the government was represented in the court proceeding wherein the charges were dismissed.[16] For example, in *Jiang*, an Assistant United States Attorney sought a continuance of a trial that was to occur a few days hence, and represented to the court that the government was unprepared to go to trial because the Assistant United States Attorney who was to try the case was on leave, and no other attorney in the office was available to try the case. 214 F.3d at 1102.[17] The district court denied the motion for continuance and dismissed the case with prejudice. *Id.* The Ninth Circuit Court of Appeals upheld the dismissal but reversed the attachment of prejudice because the delay was neither "purposeful" nor "oppressive" such that the defendant was prejudiced. *Id.* at 1103.

¶15 Notwithstanding the dissimilarity, the aforementioned authority is sound. Accordingly, we hold that Com. R. Crim. P. 48(b) is a restatement of the court's inherent authority to dismiss cases for want of prosecution.[18] Further, we hold that a court abuses

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[15] "[T]he burden of showing actual prejudice is heavy and…is rarely met." *United States v. Doe*, 149 F.3d 945, 948 (9th Cir. 1998).

[16] *See United States v. Goodson*, 204 F.3d. 508 (4th Cir. 2000); *United States v. Sears, Roebuck and Co.,* 877 F.2d 734 (9th Cir. 1989); *United States v. Hattrup*, 763 F.2d 376 (9th Cir. 1985).

[17] The facts of *Jiang* are set forth completely at 214 F.3d 1101-1102.

[18] *See supra*, at ¶10 n.12. *But see Wisconsin v. Braunsdorf*, 297 N.W.2d 808, (Wis. 1980) (finding fault with *Ex Parte Altman*, 34 F. Supp 106 (D. S.D. Cal. 1940) (which held a court has inherent power to dismiss for want of prosecution)). The court in *Braunsdorf* concluded that "the power to dismiss a criminal case with prejudice prior to jeopardy on nonconstitutional grounds is not essential to the existence or the orderly functioning of a trial court, and it is not, therefore, an inherent power of the trial courts of this state." *Id.* at 815-

its discretion when it dismisses, without prior notice to the Commonwealth that the charge will be dismissed with prejudice if the case does not proceed as scheduled, a criminal charge with prejudice on non-constitutional grounds when the Commonwealth, in good faith, appears in court and seeks a continuance of the trial because the Commonwealth is unable to proceed, and the defendant is not thereby prejudiced.

¶16 Far from appearing in court and asking, in good faith, for a continuance, the Prosecution, in the instant appeal, did not deign to appear for the trial.[19] This fact greatly changes the analysis.

¶17 In the instant case, it is clear that no notice was given to the Commonwealth that the trial judge would dismiss the charges with prejudice if the Commonwealth did not proceed with the trial as scheduled. However, it would seem impossible to have notified the Commonwealth as the Prosecution was nowhere to be found and the trial was to begin immediately. Further, it should be noted that the trial court was informed as to the reason for the Prosecution's absence before any action adverse to the Commonwealth was taken. In fact, the record reveals that the trial court dismissed the charges *precisely* due to the circumstances that occasioned the Prosecution's absence. *See supra,* at ¶5 n.7.[20]

¶18 The dissent's apparent concern that a dismissal with prejudice when the Prosecution fails to appear for a trial could sometimes be justified, *see infra*, at ¶32, is well-founded but, in this instance, misplaced. We, too, can envision scenarios, most

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[19] We are hopeful that the facts of this case will never be repeated.

[20] In this case, there can be no doubt as to why the Prosecution failed to appear for the trial, and the trial court was appraised of the reasons prior to taking any action. *See supra*, at ¶5 n.7.

dealing with sudden tragedy, illness or other calamity, which would cause the Commonwealth to fail to appear, and which would not warrant a dismissal with prejudice. As such, a trial court should proceed with caution when it finds itself in situations similar to the instant case.

¶19 Equally evident is the fact that Palacios would have in no way been prejudiced by the continuance, should it have been granted. In the first instance, Palacios has not claimed any prejudice. Furthermore, any claim of prejudice would fail as Palacios' counsel was the one who sought the continuance in the first place.[21] The obvious lack of prejudice to Palacios is not, however, dispositive for, in this instance, the court was not upholding Palacios' right against unnecessary delay.[22] By dismissing the charges, the trial court was exercising its inherent authority to maintain the respect to which the courts of the Commonwealth are entitled.

¶20 "From time immemorial, certain powers have been conceded to courts because they are courts. Such powers have been conceded because without them they could neither maintain their dignity, transact their business, nor accomplish the purposes of their existence. These powers are called inherent powers." *Wisconsin v. Cannon*, 221 N.W. 603, 603 (Wis. 1928). The failure of the Prosecution to show up for trial in the manner exhibited by the facts of this case is nothing less than an affront to the dignity of the court. Likewise, the ability of the court to transact its business and accomplish the

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[21] In fact, Palacios himself would have *benefited* from a continuance had the Prosecution shown up for court, for his own (substitute) counsel had not spoken to him about his case until the recess that was called on the day Palacios' trial was to be held. Appellee's Brief at 4 n.6.

[22] "The prohibition in our criminal justice system against unnecessary delay is designed (1) to protect against 'undue and oppressive incarceration prior to trial,' (2) to 'minimize anxiety and concern accompanying public accusation,' and (3) to protect the 'ability of an accused to defend himself.'" *Goodson*, 204 F.3d at 515-16 (*quoting Smith v. Hooey,* 393 U.S. 374, 378, 89 S. Ct. 575, 577, 21 L. Ed. 2d 607, 611 (1969)).

purposes of its existence was also dealt a blow by the Commonwealth's failure to appear for the trial. As such, the trial court's dismissal of the charges against Palacios was appropriate.

¶21 Furthermore, due to the unique facts of this case, the dismissal *with prejudice* was proper. It should be noted that neither party has directed us to a published opinion wherein it was held that a dismissal with prejudice was improper when the prosecutor failed to appear when the case was called for trial. In fact, no case cited by any party approximates the unique facts of the case before us.[23]

¶22 When the Prosecution assumed that the continuance would be granted, and failed to appear at the time the trial was to commence, the trial judge was placed in a situation wherein he could have either granted or denied the continuance. He chose to deny the continuance, *see supra,* at ¶5 n.7, which was well within his authority, for it is a "well settled rule" that the decision as to whether to grant a continuance is within the court's discretion. *United States v. Cook*, 487 F.2d 963, 965 (9th Cir. 1973) (citation omitted).

¶23 Having decided to deny the continuance, the trial judge was then faced with a situation where, should he have conducted a trial without the Prosecution, the trial would have been nothing more than a sham. In essence, the Prosecution's inaction forced the trial judge either to accept a continuance, forced upon him at the last moment by both parties, which he was disinclined to grant or proceed with a sham trial which would have made a mockery of the courts of the Commonwealth.[24] The trial judge wisely decided to do neither and properly dismissed the charges with prejudice.

[23] It would appear self-evident that prosecutors should appear in court when the cases they initiate are called for trial.

[24] We are not of the opinion that, in this instance, the trial court had the third option, proffered by the dissent, to dismiss the charges without prejudice. *See infra,* at ¶34. To do so in this case would be tantamount to granting the continuance the trial court had, in its discretion, decided not to grant.

CONCLUSION

¶24 For the foregoing reasons, the trial court did not abuse its discretion when it dismissed the charges against Palacios with prejudice. Consequently, the actions of the trial court are in all respects **AFFIRMED**.

SO ORDERED THIS 1ST DAY OF APRIL 2003.

/s/____________________________________
MIGUEL S. DEMAPAN, CHIEF JUSTICE

/s/_________________________________
PEDRO M. ATALIG, JUSTICE *PRO TEMPORE*

CASTRO, Associate Justice, dissenting in part:

¶25 I respectfully dissent in part.

¶26 While I agree with the majority in part, including the adoption of Commonwealth Rule of Criminal Procedure 48(b) as a restatement of the court's inherent authority to dismiss cases for want of prosecution, I disagree with the majority's conclusion that a dismissal *with prejudice* is proper in this case.

¶27 It is well within the trial court's inherent supervisory authority to dismiss a case when the prosecutor fails to appear for trial. However, dismissals are disfavored in general as they contravene public policy, which favors full and final decision on the merits. *See supra,* at ¶11. A dismissal *with prejudice* is an extraordinarily harsh remedy

and should be used sparingly in rare cases when extreme circumstances warrant it. *See supra,* at ¶¶11-12.

¶28 A court "'abuses its discretion if it imposes a sanction of dismissal without first considering the impact of the sanction and the adequacy of less drastic sanctions.'" *Malone v. United States Postal Service*, 833 F.2d 128, 131 (9th Cir. 1987) (*quoting United States v. National Medical Enters., Inc.*, 792 F.2d 906, 912 (9th Cir. 1986)); *see also Hamilton v. Neptune Orient Lines, Ltd.*, 811 F.2d 498, 500 (9th Cir. 1987) ("Nor does a district judge's understandable pique excuse his failure to consider alternative sanctions."). It is evident from the record that in the confusion surrounding this case, including the last minute filing of a motion to continue, the substitution of defense counsel, the miscommunication between defense counsel and defendant,[25] and the Prosecution's complete failure to appear, the trial judge was understandably irate and did not consider the adequacy of less drastic measures before issuing a dismissal *with prejudice*. *See supra,* at ¶5.

¶29 The *Sears Roebuck and Co*. case sets forth the two-pronged test that must be satisfied before a court can dismiss a case *with prejudice*. *Sears, Roebuck and Co.,* 877 F.2d 734 (9th Cir. 1989); *supra,* at ¶13. The first prong of the test requires caution and the second prong requires forewarning. *Id*. Neither prong of the test is satisfied in this case.

¶30 The first prong of the test, dealing with caution, is satisfied when the court finds prosecutorial misconduct that results in demonstrable prejudice to the defendant. *Id*. at 737-38. An example of prosecutorial misconduct that justifies a dismissal *with prejudice*

[25] Defendant, Mr. Palacios, was not informed of the continuance by his counsel. *Supra,* at ¶5.

is purposeful or oppressive delay. *See supra,* at ¶14. The prosecutorial misconduct here, while disrespectful and clearly warranting sanction by the court, was not purposeful or oppressive and did not prejudice the defendant. The Prosecution stipulated to a continuance at the behest of defense counsel, but then erred by making no effort to confirm whether the continuance was granted or denied before failing to appear at the scheduled time of trial.[26]

¶31 At best, these actions demonstrate a wanton disregard for the court's sole authority to grant or deny a motion to continue and a reliance on the untenable assumption that such a motion will be automatically granted. However, the Prosecution's attempts to cooperate with Palacios' counsel did not prejudice the defendant. *Supra,* at ¶19. Prosecutorial misconduct and poor judgment are readily apparent in this case but there were no purposeful or oppressive attempts to delay the trial and the defendant was not prejudiced, therefore a dismissal *with prejudice* was not warranted.

¶32 The second prong of the test for dismissal *with prejudice* is not satisfied, as the Commonwealth received no warning before the case was dismissed *with prejudice*. The Ninth Circuit Court of Appeals requires that the Prosecution be forewarned that a failure to proceed to trial in a timely manner will result in dismissal with prejudice. *United States v. Talbot*, 51 F.3d 183, 186-87 (9th Cir. 1995), *citing United States v. Simmons,* 536 F.2d 827, 836 (9th Cir.1976). The Commonwealth's failure to appear does not relieve the court of its duty to provide notice of the consequences before dismissing a case *with prejudice*. Here, the majority argues that a warning was not required before

[26] Again, it should be noted that the continuance was filed a mere fifteen minutes before the trial was scheduled to begin. *Supra,* at ¶4 n.6.

dismissal *with prejudice* because it is impossible to warn a prosecutor who is not before the court. This facile argument must fail, as it discounts any reasonable explanation for the Prosecution's absence and ignores the many other possible means of warning the Prosecution prior to imposing the extreme remedy of a dismissal *with prejudice*. In criminal cases, when it is impossible to provide fair warning to the Commonwealth of the consequences of a dismissal *with prejudice*, the court may only exercise its authority to dismiss a case without prejudice.

¶33 When faced with parties who don't comply with court rules or show manifest disrespect for the court, the court has other inherent powers that it may use to protect its dignity, namely imposing sanctions on counsel for misconduct. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991), *see also NASCO, Inc.* v. *Calcasieu Television & Radio, Inc.*, 894 F.2d 696, 702 (5th Cir. 1990). Rather than a dismissal *with prejudice*, I contend that disciplinary and/or monetary sanctions were a proper way to enforce judicial authority and mete punishment for the Prosecution's egregious showing of disrespect for the court.[27]

¶34 After the trial court denied the continuance and was faced with an absent Prosecution it had options for action beyond "holding a sham trial" or dismissing the case *with prejudice*. *See supra*, at ¶23. An option available to the court was to dismiss the case without prejudice. Contrary to the majority's assertion, a dismissal without prejudice is not the same as granting a continuance because the Prosecution is required to

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[27] Examples of sanctions available to the Judge to punish attorney misconduct include, but are not limited to, "'a formal reprimand, . . . a fine, the imposition of costs or attorney fees, the temporary suspension of the culpable counsel from practice before the court, . . . dismissal of the suit unless new counsel is secured[,] . . . or the imposition of fees and costs upon plaintiff's counsel. . . .'" *Malone v. United States Postal Service*, 833 F.2d 128, 132 n.1 (9th Cir. 1987) (*quoting Titus v. Mercedes Benz of North America*, 695 F.2d 746, 749 n.6 (3d Cir. 1982)).

start over and retake every previous step in order to bring the case to trial.[28] The Commonwealth's limited resources, heavy caseload, and lack of manpower ensure that taking steps to reinitiate a case after a dismissal without prejudice will happen rarely, if ever. Clearly, the effect of a dismissal without prejudice differs greatly from a continuance, which only reschedules the proceeding to a later date.

¶35 In dismissing a criminal case *with prejudice,* without caution and forewarning, and in the absence of purposeful and oppressive prosecutorial misconduct, "the court allows its interest in the orderly administration of justice to override the interests of victims and the public interest in the enforcement of the criminal law."[29]

¶36 I would therefore reverse the trial court's dismissal *with prejudice*.

/s/____
ALEXANDRO C. CASTRO, ASSOCIATE JUSTICE

[28] This Justice is convinced that the Commonwealth would not attempt to use a failure to appear at trial as a strategic move, expecting a dismissal without prejudice as the sole sanction. In such an unlikely scenario, the resulting sanction by the court would reach far beyond a dismissal of the case before it.

[29] *Goodson*, 204 F.3d at 514; *see also supra,* at ¶12. The CNMI Constitution explicitly recognizes the rights of victims of crimes. N.M.I. Const., art. I, § 11.