IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff/Appellant,

v.

CALISTRO CRISOSTIMO, GEORGE AGUON, AND JEROME T. DELEON GUERRERO,
Defendant s/Appellees.

Supreme Court Appeal No. 03-011
Criminal Case No. 03-0011C

FOR PUBLICATION

OPINION

Cite as: *Commonwealth v. Crisostimo*, 2005 MP 18

Argued and submitted on May 12, 2004
Saipan, Northern Mariana Islands

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BEFORE: MIGUEL S. DEMAPAN, *Chief Justice*; ALEXANDRO C. CASTRO, *Associate Justice*; JOHN A. MANGLONA, *Associate Justice*

CASTRO, Associate Justice:

¶1 The Commonwealth of the Northern Mariana Islands ("Government") appeals from the trial court's Orders of January 24, 2003 and February 11, 2003, finding no probable cause at the respective preliminary hearings. The Government argues that the trial court misapplied the law of conspiracy and erred in finding no probable cause in the preliminary hearings involving conspiracy charges against Appellees. The Government further contends that the trial court applied the wrong standard in weighing the evidence in rendering its decision.[1] Because we find that there was no final judgment with respect to any of the named Appellees, we DISMISS this appeal for lack of jurisdiction.

I.

¶ 2 On January 14, 2003, George Aldan Aguon was arrested by police officers who were conducting a surveillance operation at the Grotto. After detaining Aguon, police later arrested Calistro Crisostomo and Jerome T. Deleon Guerrero. Aguon was charged with two counts of conspiracy to commit burglary, two counts of conspiracy to commit theft, two counts of conspiracy to commit criminal mischief, attempt to commit burglary, attempt to commit theft, and attempt to commit criminal mischief. Crisostomo and Deleon Guerrero were each charged with conspiracy to commit burglary, conspiracy to commit theft, attempt to commit theft, and attempt to commit criminal mischief.[2]

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[1] The Government's arguments are based solely on the February 5, 2003 hearing.

[2] A fourth defendant, Joseph Acosta Crisostomo, was also named in the Information and as an original party to this appeal. Following the preliminary hearing on February 5, the court *sua sponte* heard Joseph Crisostimo's motion to dismiss. The court took judicial notice of the preliminary hearings of Aguon, Calistro and Deleon Guerrero and dismissed without prejudice all charges against Joseph Crisostomo on February 11, 2003. The appeal against Joseph was later dismissed by stipulation between the parties on April 14, 2004.

¶ 3 On January 24, 2003, a preliminary hearing was held in the trial court for Aguon. Following that preliminary hearing, the lower court dismissed, without prejudice, every count in the Information against him. The court concluded that the Government did not present sufficient evidence to establish probable cause of the offenses charged. At the end of that proceeding, the court dismissed the case without prejudice.[3]

¶ 4 On February 5, 2003, before the commencement of the preliminary hearings for Crisostomo and Deleon Guerrero, the Government made an oral motion for recusal. The motion was based on fact that the same judge had presided over the prior preliminary hearing of alleged co-conspirator Aguon. After argument on the motion, the court denied the Government's motion for recusal.

¶ 5 Also, before the start of the preliminary hearing of Crisostomo and Deleon Guerrero, the Government informed the court that it intended to proceed only on the counts concerning conspiracy to commit theft and conspiracy to commit burglary. The Government dismissed all charges of attempt against defendants Crisostomo and Deleon Guerrero and "reserved [its] right to proceed with [other conspiracy charges against Aguon] on another day." Excerpts of Record ("E.R.") at 36.

¶ 6 At the preliminary hearing, the court determined:

> based on the totality of the testimony received today and given the court's finding and determination as to the credibility of the witnesses that testified today, and everything that has been said on the record today and as part of the record, the court will find that there is . . . no probable cause to believe that these crimes were committed.

E.R. at 47. It further found that there was "insufficient evidence to establish that…there is probable cause to find that these two defendants committed these charges at the time." *Id*.

[3] The court further stated, "[i]f the government has, after further investigation, has [sic] found additional evidence, you may proceed to prosecute against the defendant. At this time it is a dismissal without prejudice." Excerpts of Record at 35.

Again, the court dismissed the case without prejudice and reminded the parties that the Government may re-file the case at a later time after further investigation. Supplemental Excerpts of Record at 115.[4]

II.

¶ 7 While the Government argues this Court has jurisdiction pursuant to 1 CMC § 3102(a) and 6 CMC § 8101(b), we find that there is no jurisdiction in this case for the reasons discussed below.

III.

A. Jurisdiction

¶ 8 At the threshold of every case, this Court must first determine whether it has the power to decide the questions presented. "On every writ of error or appeal, the first and fundamental question is that of jurisdiction." *Steel Co. v. Citizens for a Better Env't***,** 523 U.S. 83, 94, 118 S. Ct. 1003, 1012, 140 L. Ed. 2d 210, 214 (*quoting Great S. Fire Proof Hotel Co. v. Jones*, 177 U.S. 449, 453, 20 S. Ct. 690, 691-92, 44 L. Ed. 842, 846 (1900)). We may bring up the question *sua sponte*, even if no parties have raised the question.[5] *Id*. The United States Supreme Court notes that the jurisdictional requirement is both "inflexible and without exception." *Id*.

¶ 9 Expanding on this concept, the U.S. Supreme Court in *Steel Company* stated that the "requirement that jurisdiction be established as a threshold matter springs from the nature and limits of judicial power of the United States." 523 U.S. at 94-95, 118 S. Ct. at 1012, 140 L. Ed.

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[4] The Government did not file the required certification in the Superior Court to secure the evidence nor did the Government request from this Court to stay the execution of the order releasing the property. The Government filed this appeal.

[5] The idea that the Court must consider the question of jurisdiction at the threshold is a matter well settled not only in the Commonwealth, but also in all common law jurisdictions. Our Court has the "authority and the obligation to determine its appellate jurisdiction." *Mafnas v. Superior Court*, 1 N.M.I 277, 282 (1990), *appeal dismissed*, 936 F.2d 1068 (9th Cir. 1991). We reject the Government's assertion that "this issue is one that should be given short shrift by this court" simply because it was not raised by all Appellees. Appellant's Reply Brief at 5.

2d at 214 (internal quotations and citations omitted). For this reason, "statutory and (especially) constitutional elements of jurisdiction are an essential ingredient of separation and equilibration of powers, restraining the courts from acting at certain times, and even restraining them from acting permanently regarding certain subjects." *Id*., 523 U.S. at 101, 118 S. Ct. at 1016, 140 L. Ed. 2d at 216. This Court is similarly bound by these concepts of jurisdiction, both constitutionally and statutorily.

¶ 10 The Commonwealth Constitution limits the jurisdiction of the Supreme Court to judgments that are final. Article IV, Section 3 states: "[t]he Commonwealth supreme court shall hear appeals from final judgments and orders of the Commonwealth superior court." N.M.I. Const. art. IX, § 3 (emphasis added). In 1997, House Legislative Initiative 10-3 specifically added the word "final" into the section, further defining the jurisdiction of the Supreme Court. For this reason, our jurisdiction is constitutionally limited and we are restrained from acting at certain times.

¶ 11 Prior to 1997, our case law was also clear that any statute giving our Court authority to hear a case should be applied only to final judgments and orders. In *Commonwealth v. Guerrero*, 3 N.M.I. 479 (1993), we held that 1 CMC § 3102(a) "grants this Court appellate jurisdiction over Superior Court judgments and orders which are final." *Id*. at 481 (emphasis added). In *Guerrero*, we reaffirmed the rule set by *Commonwealth v. Hasinto*, 1 N.M.I. 377 (1990) (holding that jurisdiction must come from judgments and orders which are final and does not extend to interlocutory orders unless expressly allowed by statute, rule or constitution). Collectively, this is known as the Final Judgment Rule.[6]

[6] There are limited exceptions to the Final Judgment Rule, such as the Collateral Order Doctrine. *See Commonwealth v. Guerrero*, 3 N.M.I. 479, 482 (1993); *Guo Qiong He v. Commonwealth*, 2003 MP 3 ¶ 14 n. 8, 6 N.M.I. 535, 537 n.8.

¶ 12 It is upon this constitutional foundation that the jurisdictional statutes cited by the Government must lie. It is clear from the precedent above that 1 CMC § 3102(a) gives rise to appellate jurisdiction over judgments and orders that are final. While *Hasinto* and *Guerrero* involved the interpretation of 1 CMC § 3102(a), we find that their holding extends to all statutes allowing appeals, including 6 CMC § 8101(b). This is especially true given the constitutional provision requiring finality. Thus, we must determine first, whether the dismissal without prejudice falls within either statute, and further whether it is indeed a "final judgment."

¶ 13 "A criminal statute providing the government with a limited right to appeal is to be strictly construed." *Commonwealth v. Nethon*, 1 N.M.I. 458, 461 (1990). Title 6, Section 8101(b) of the Commonwealth Code expressly enumerates the kinds of orders and judgments that the Commonwealth may appeal.[7] Interestingly, while the Government cites the provision, it does not explain to this Court which specific section upon which it relies. This Court presumes the Government is referring to the provision in the second paragraph dealing with the return of seized property. That provision does not apply in this case, however, as the Government admittedly did not file the required certification with the trial court. Dismissals based on findings

[7] 6 CMC § 8101(b) states in pertinent part:

> In a criminal case an appeal by the Commonwealth government shall lie to the Supreme Court from a decision, judgment or order of the Superior Court dismissing an information or granting a new trial after verdict or judgment, as to any one or more counts, except that no appeal shall lie where the double jeopardy clause of the Commonwealth Constitution prohibits further prosecution.
>
> An appeal by the Commonwealth government shall lie to the Supreme Court from a decision or order of the Superior Court suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an information, if the Attorney General certifies to the Superior Court that the appeal in not taken for purpose of delay and the evidence is a substantial proof of a fact material in the proceeding.

of no probable cause are neither expressly listed nor contemplated in this provision. We decline to make such a construction or interpretation of this provision.[8]

B. Finding of No Probable Cause

¶ 14 It has long been recognized:

> the critical importance of the preliminary hearing as a mechanism to weed out groundless claims and thereby avoid for both defendants and the People the imposition and expense of an unnecessary criminal trial: 'Many an unjustifiable prosecution is stopped at that point, where the lack of probable cause is clearly disclosed.'

Mills v. Superior Court, 728 P.2d 211, 214 (Cal. 1986) (*citing Jaffe v. Stone*, 114 P.2d 335 (Cal. 1941)). As such, "a finding of no probable cause is neither a conviction nor an acquittal." *Illinois v. Harkness*, 339 N.E.2d 545, 547 (Ill. App. Ct. 1975) (*citing Illinois v. Brown*, 306 N.E. 2d 561 (Ill. App. Ct. 1973)).

¶ 15 A finding of probable cause is different from most judgments and orders of the trial court. It makes no judgment on the merits of the case. Because it does not bear on the guilt or innocence of the accused, such a finding does is not final as required by our Constitution and common law in order to be appealable. To illustrate this point more clearly, it is helpful to look at a Ninth Circuit extradition case reasoning that:

> [a] finding of extradition signals the start, rather than the conclusion, of litigation of the fugitive's guilt or innocence. As opposed to a final judgment, it is truly an interlocutory order, more akin to a preliminary hearing on criminal charges. And in that area of law, it is well settled that a finding of lack of probable cause does not bar the state from rearresting the suspect on the same charges. Because the extraditing court does not render judgment on the guilt or innocence of the

[8] 6 CMC § 8101(b) does allow appellate jurisdiction over a "decision, judgment or order of the Superior Court dismissing an information." For the reasons discussed *infra*, a dismissal without prejudice based on a finding of no probable cause does not fit within the meaning of this section because it is not a final judgment. On the other end of the spectrum, a dismissal of an information with prejudice clearly does have the finality which would allow for an appeal under this section. *See, e.g. Taman v. Marianas Pub. Land Corp***,** 4 N.M.I. 287, 291 (1995) (a dismissal with prejudice operates as an adjudication upon the merits, "unless it is for either lack of jurisdiction, improper venue, or for failure to join a party." (*citing* Com. R. Civ. P. 41(b)). Because the question is not presented, we do make any determinations regarding other sorts of dismissals this Court may encounter.

> fugitive, it cannot be said that an order of extraditability constitutes a final judgment . . . .

Hooker v. Klein, 573 F.2d 1360, 1367-68 (9th Cir. 1978).

¶ 16 The Government argues that the orders[9] entered into had "characteristics" of a final order. Because the court ordered the release of evidence to the Appellees, the Government argues, this has the effect of precluding the Government from gaining additional evidence. While it is true that the evidence was released, the burden was upon the Government to request its preservation. Failure to do so does not change the order of the court. Further, while the release of evidence may hinder the Government from furthering its investigation, it was the obligation of the Government to follow the outlined procedures. The "characteristics" described by the Government were self-imposed and not in the inherent nature of a dismissal without prejudice.

IV.

¶17 We hold that a finding of no probable cause is not a final judgment. *See, Harkness*, 339 N.E.2d at 547. A court's determination that no probable cause exists to support a charge does not bar the prosecution from re-filing the charge.[10] *De Anda v. City of Long Beach*, 7 F.3d 1418, 1422 n.6 (9th Cir. 1993). Such a determination has no preclusive effect, and therefore is not a final decision. *Id.* at 1422. "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Ex parte McCardle*, 74 U.S.

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[9] The Government appeals against three Appellees-Defendants, for which there were two separate hearings and two separate orders. Despite this fact, the Government offers only a blanket argument against all Appellees, arguing about hearings that do not affect all Appellees and orders that do not control all Appellees. Had we reached the merits of this case, the Government would have been hard pressed to prove its arguments, having not identified which issues apply to which Appellee.

[10] *But see, Moreno v. Baca*, No. CV 00-7149 ABC (CWX), 2002 WL 338366, at *6 (C.D. Cal. Feb. 25, 2002) ("under the right set of circumstances, issues necessarily determined during a preliminary hearing in a criminal case may be precluded from re-litigation in a subsequent civil suit").

506, 514, 19 L. Ed. 264, 266 (1868). For the foregoing reasons, the appeal is hereby **DISMISSED.**

¶ 18 **SO ORDERED** THIS 8TH DAY OF OCTOBER 2005.

/s/_____
MIGUEL S. DEMAPAN
Chief Justice

/s/_____
ALEXANDRO C. CASTRO
Associate Justice

/s/_____
JOHN A. MANGLONA
Associate Justice