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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
Plaintiff-Appellee,

v.

TARSON PETER,
Defendant-Appellant.

SUPREME COURT NO. CR-06-0019-GA
SUPERIOR COURT NO. 06-0044C

Cite as: 2010 MP 15

Decided October 12, 2010

Elisa A. Long, Saipan, Northern Mariana Islands for Defendant, Appellant
Joseph L.G. Taijeron, Jr., Saipan, Northern Mariana Islands for Plaintiff, Appellee

BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; and F. PHILIP CARBULLIDO, Justice Pro Tem

DEMAPAN, C.J.:

¶ 1 Defendant Tarson Peter ("Peter") appeals his one-year prison sentence for assault and battery, and for the same acts, a consecutive one-year prison sentence for violating an order for protection pursuant to the Domestic Violence Act.[1] Peter argues that assault and battery is a lesser included offense to the charge of violating the order for protection, and as a result, the consecutive sentences violate the Double Jeopardy Clause under both the Commonwealth and United States Constitutions. We hold that because the Commonwealth Legislature intended to impose multiple punishments on persons who violate protection orders, and the multiple sentences were handed down at a single trial, Double Jeopardy concerns do not arise. Therefore, Peter's consecutive sentences do not violate the Double Jeopardy Clause. Accordingly, we AFFIRM the trial court's sentencing order.

I

¶ 2 Peter lived with his common-law wife Kerien Witer ("Witer"), and the two shared a home together with their children. In June 2005, Witer obtained an order for protection from the trial court, which ordered Peter not to "molest, attack, strike, threaten, sexually assault, batter, telephone or disturb [her] peace." Excerpts of Record ("ER") at 173-74. Witer returned home with her children less than a year later, and upon her arrival, Peter shouted at her and accused her of having an affair. He then prepared a meal, which he placed on the floor by the dining table, and he then forced Witer to eat the food. While Witer was on the floor, Peter hit her leg and foot with a broom and threatened her. Witer sustained injuries from this attack. Several days later the authorities were notified. The Commonwealth filed an amended information charging Peter with two counts of assault and battery in violation of 6 CMC § 1202(a) (Counts I & II),[2] violating an order for protection in violation of 6 CMC § 1464(a) (Count III), which is punishable pursuant to 6 CMC § 1464(b)(2) and (c)(3), and disturbing the peace in violation of 6 CMC § 3101(a) (Count IV). A bench trial was held, and Peter was convicted on all counts.

¶ 3 The trial court sentenced Peter to a one-year term of imprisonment for assault and battery pursuant to 6 CMC § 1202(a), and also sentenced him to a consecutive one-year term of imprisonment for violating an order for protection pursuant to 6 CMC § 1464(a). The trial court stated in its sentencing

---

[1] Peter also appeals the trial court's ruling that assault and battery is not a lesser-included offense of disturbing the peace. In *Commonwealth v. Atalig*, we found that convictions for assault and battery and disturbing the peace did not violate the Double Jeopardy Clause. 2002 MP 20 ¶¶ 40-43. We re-examined the issue on two separate occasions and re-affirmed our holding in *Atalig*. *See Commonwealth v. Crisostomo*. 2007 MP 7 ¶ 17; *Commonwealth v. Taisacan*, 2005 MP 9 ¶¶ 38-41. As the statutes remain unchanged, we see no reason to revisit the issue, and hold that assault and battery is not a lesser included offense of disturbing the peace.

[2] One count of assault and battery was dismissed prior to trial.

order that according to the terms of 6 CMC § 1464(b), the punishment for violating an order for protection includes a term of imprisonment of up to one year, and that "a defendant convicted of this crime and whose conduct causes physical injury to another person, shall be sentenced to a mandatory term of 20 days. This mandatory minimum . . . shall run consecutively to any other term of imprisonment." ER at 4. The trial court found that a separate sentence for disturbing the peace violated Peter's double jeopardy rights under the Commonwealth and United States Constitutions, but rejected Peter's argument that assault and battery is a lesser-included offense of violating an order for protection or a charge of disturbing the peace.[3] On appeal, Peter argues that the consecutive sentences he received for violating the protection order and for assault and battery violate the Double Jeopardy Clause.

II

¶ 4 The issue before us is whether the two consecutive one-year terms of imprisonment Peter received for violating the order for protection and for assault and battery subject him to multiple punishment for the same crime by placing him twice in jeopardy. A double jeopardy challenge is a question of law this Court reviews de novo. *Commonwealth v. Kaipat*, 4 NMI 300, 303 n.10 (1995); *Commonwealth v. Oden*, 3 NMI 186, 191 (1992).

¶ 5 The Fifth Amendment to the United States Constitution provides that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." Article I, § 4(e) of the Commonwealth Constitution similarly states that "no person shall be put twice in jeopardy for the same offense regardless of the governmental entity that first instituted prosecution."[4] This Court previously stated that "[o]ur double jeopardy clause is patterned after the Double Jeopardy Clause of the U.S. Constitution," and when we are faced with a double jeopardy issue, we "resort to federal case law which interprets the U.S. Constitution's Double Jeopardy Clause to ensure that our interpretation of the Commonwealth Constitution's double jeopardy provision provides at least the same protection granted defendants under the federal Double Jeopardy Clause." *Commonwealth v. Crisostomo*, 2007 MP 7 ¶ 13 (citing *Oden*, 3 NMI at 206). The Double Jeopardy Clause protects an individual against: (1) a second prosecution for the same offense after acquittal; (2) a second prosecution for the same offense after conviction; and (3) multiple punishments for the same offense. *Commonwealth v. Milliondaga*, 2007 MP 6 ¶ 5 (citing *Oden*, 3 NMI at 206.) The instant case falls under the third protection—multiple punishments for the same

---

[3] The Government did not appeal the trial court's finding that a separate sentence for disturbing the peace violated Peter's double jeopardy rights, and therefore, the issue is not before us.

[4] The Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, § 501(a), makes the Double Jeopardy Clause of the Fifth Amendment to the U.S. Constitution applicable to the Commonwealth.

offense.[5] When asked to determine whether an individual is subject to multiple punishments for the same offense during a single proceeding, we first determine whether the legislature intended to impose multiple sanctions for the same conduct, *Missouri v. Hunter*, 459 U.S. 359, 366 (1983), and if not, we then apply the test enunciated in *Blockburger v. United States*, 284 U.S. 299, 304 (1931). *See Milliondaga*, 2007 MP 6 ¶ 6; *Oden*, 3 NMI at 207.

¶ 6 Under *Blockburger*, "the applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." 284 U.S. at 304. In *Rutledge v. United States*, 517 U.S. 292, 297 (1996), the Court reaffirmed the *Blockburger* test in its entirety. When applying the test, the focus is "on the proof necessary to prove the statutory elements of each offense, rather than on the actual evidence to be presented at trial." *Vitale*, 447 U.S. at 416. If each statute requires proof of a fact which the other does not, the *Blockburger* test is satisfied notwithstanding a substantial overlap in the proof offered to establish the crime. *Iannelli v. United States*, 420 U.S. 770, 785 n.17 (1975).

¶ 7 Some confusion arose over *Blockburger's* application when the Supreme Court announced a supplemental "same conduct" test in *Grady v. Corbin*, 495 U.S. 508 (1990). The *Grady* test, however, was explicitly overruled in *United States v. Dixon*, 509 U.S. 688, 704 (1993). *Dixon* was a plurality decision that concerned successive prosecutions, and its mandate is not applicable to our holding today. Nevertheless, the trial court and Peter discuss it, and thus, we would like to clear up any confusion that exists concerning its application. The Court in *Dixon* applied *Blockburger*, and in pertinent part held that the defendant's prosecution for violating an order for protection barred his subsequent prosecution for simple assault; simple assault partly formed the basis for the protection order violation. *Id.* at 700. Read narrowly, the opinion only applies in this context, but two partial concurring and dissenting opinions noted that a defendant could face multiple punishments meted out in the same proceeding for violating an order for protection and for the underlying offense that resulted in the violated protection order. *See id.* at 714 (Rehnquist, C.J., concurring and dissenting), 723-24 (White, J., concurring and dissenting).

¶ 8 Chief Justice Rehnquist's partial concurrence and dissent flatly rejected the Court's holding that conviction of the generic crime of contempt barred the subsequent prosecution for the substantive offense. *Id.* at 714. He noted that "[c]ontempt of court comprises two elements: (i) a court order made known to the defendant, followed by (ii) willful violation of that order," and that "[n]either of those elements is necessarily satisfied by proof that a defendant has committed the substantive offense[] of assault," and similarly, "no element of [that] substantive offense[] is necessarily satisfied by proof that a defendant has

[5] The convictions stemmed from a single bench trial, and thus, double jeopardy concerns stemming from subsequent prosecutions are not before the Court.

been found guilty of contempt of court." *Id.* at 716. The Chief Justice largely joined with the majority, which affirmed most of the subsequent convictions, but dissented from this particular holding. *See United States v. Henry*, 519 F.3d 68, 73 (1st Cir. 2008) (citing to the Chief Justice's dissent in holding that "[t]he divided court left open the possibility that an individual could be punished for both contempt and an underlying offense in a single proceeding without implicating constitutional concerns."). Thus, the Chief Justice's partial concurrence and dissent flatly rejected the notion that a prosecution for violating a court order and a prosecution for a substantive criminal offense can ever be barred by the Double Jeopardy Clause.

¶ 9 Likewise, Justice White's partial concurrence and dissent explicitly recognized "that contempt proceedings are not intended to punish conduct proscribed as harmful by the general criminal laws. Rather, they are designed to serve the limited purpose of vindicating the authority of the court." 509 U.S. at 723 (internal quotations omitted). He went on to state "[t]he fact that two criminal prohibitions promote different interests may be indicative of legislative intent and, to that extent, important in deciding whether cumulative punishments imposed in a single prosecution violate the Double Jeopardy Clause." *Id.* at 724; *see Hunter*, 459 U.S. at 366-68. Justice White reasoned that this principle could not be applied to the case at bar, however, because the defendants before the Court faced successive prosecutions, which raised other constitutional concerns. *Dixon*, 509 U.S. at 724 (citing *Green v. United States*, 355 U.S. 184, 187 (1957); *United States v. Wilson*, 420 U.S. 332, 343 (1975)). Because the question before the Court concerned successive prosecutions, Justice White joined in the Court's holding that the defendant who was prosecuted for violating an order for protection could not be subsequently prosecuted for simple assault without offending the Double Jeopardy Clause. In light of the Court's narrow holding and its illuminating concurring and dissenting opinions, we interpret *Dixon* to only potentially prohibit a subsequent prosecution for simple assault when that offense formed the basis for a finding that a defendant violated a protection order. Additionally, this holding applies, if at all, in the context of a subsequent prosecution, and *Dixon* is not binding on us today because we are faced with a defendant who received two sentences in the same proceeding.

¶ 10 This Court presumes that "where two statutory provisions proscribe the same offense, [the] legislature does not intend to impose two punishments for that offense." *Rutledge*, 517 U.S. at 297 (citing *Whalen v. United States*, 445 U.S. 684, 691-92 (1980); *Ball v. United States*, 470 U.S. 856, 861 (1985)). Before we turn to *Blockburger*, however, we must first ascertain whether it was the Commonwealth Legislature's intent to subject defendants who violate protection orders to multiple punishments when the protection order is violated as a result of conduct that amounts to assault and battery. It must be noted that *Blockburger* is a rule of statutory construction, and it is *not* a U.S. Constitutional limitation on the legislature's authority to impose multiple sanctions for the same conduct. *Hunter*, 459 U.S. at 366. "With

respect to cumulative sentences imposed in a single trial, the Double Jeopardy Clause does no more than prevent the sentencing court from prescribing greater punishment than the legislature intended." *Id.* There is an assumption that "Congress ordinarily does not intend to punish the same offense under two different statutes. Accordingly, where two statutory provisions proscribe the 'same offense,' they are construed not to authorize cumulative punishments in the absence of a clear indication of contrary legislative intent." *Id*. (quoting *Whalen*, 445 U.S. at 691-92). Similarly, the "*Blockburger* test is 'a rule of statutory construction,' and because it serves as a means of discerning congressional purpose the rule should not be controlling where, for example, there is a clear indication of contrary legislative intent." *Hunter*, 459 U.S. at 367 (quoting *Albernaz* v. *United States*, 450 U.S. 333, 340 (1981)). In *Hunter*, the Court found that the Missouri legislature intended cumulative punishments for violations of the state's armed robbery and armed criminal action statutes, and therefore, it upheld the two sentences imposed on the defendant. The Court stated:

> [S]imply because two criminal statutes may be construed to proscribe the same conduct under the *Blockburger* test does not mean that the Double Jeopardy Clause precludes the imposition, in a single trial, of cumulative punishments pursuant to those statutes. The rule of statutory construction noted in *Whalen* is not a constitutional rule requiring courts to negate clearly expressed legislative intent.

Hunter, 459 U.S. at 368. Thus, it is up to the legislature to decide whether to impose multiple punishments for the same criminal conduct, and where that intent is clear, the imposition of multiple punishments imposed in the same proceeding does not run afoul of the Double Jeopardy Clause. [6]

¶ 11 Our previous cases discussing the Double Jeopardy Clause in the lesser included offense context did not need to address the *Hunter* legislative intent rule because there was never any reason to presume that the legislature intended to impose multiple punishments for the same criminal conduct.[7] As a result,

---

[6] *See, e.g.*, *Henry*, 519 F.3d at 72 ("A defendant's constitutional rights are not implicated where the legislature clearly intended to impose multiple punishments for the offense.") (internal quotations omitted); *United States v. Ogba*, 526 F.3d 214, 233 (5th Cir. 2008) (applying the *Blockburger* test in the absence of a "clear indication" of legislative intent to permit cumulative punishment for one offense under two separate statutes); *Plascencia v. Alameida*, 467 F.3d 1190, 1204 (9th Cir. 2006) ("The key to determining whether multiple charges and punishments violate double jeopardy is legislative intent") (citation omitted); *United States v. Konopka*, 409 F.3d 837, 839 (7th Cir. 2005) ("the Double Jeopardy Clause also prevents the sentencing court from prescribing greater punishment than the legislature intended") (internal quotations omitted); *United States v. Johnson*, 352 F.3d 339, 343 (8th Cir. 2003) ("Even if the elements of two offenses are the same [under *Blockburger*], prosecution on the second charge is permissible under the Double Jeopardy Clause if the legislature intended that the second offense be separately punishable from the first.") (citation omitted).

[7] For example, in *Milliondaga*, 2007 MP 6, the defendant challenged his two assault and battery convictions on double jeopardy grounds claiming that there was only one continuous attack on the victim. The trial court found that the defendant committed one act of assault and battery when he pushed and shoved his wife, and a second when he subsequently choked her. *Id*. ¶ 2. We relied on *Blockburger*, and other U.S. Supreme Court cases, and found that only one continuous act occurred, and therefore, the defendant could only be charged once. *Id*. ¶ 9. Additionally, the assault and battery statute, 6 CMC § 1202, is silent regarding cumulative sentences for the same conduct. Likewise, in *Oden*, 3 NMI at 207, one of our oldest double jeopardy cases, we considered whether conduct that violated 6 CMC § 1311 and 6 CMC § 1307 violated the Double Jeopardy Clause. The statutes are silent regarding consecutive

we always focused our analysis on the *Blockburger* "same elements" test. This is our first opportunity to consider legislative intent because 6 CMC § 1464 specifically, and the Domestic Violence Act generally, discuss the imposition of consecutive sentences.

¶ 12 We generally construe provisions of the Commonwealth Code "according to the reasonable construction of their terms with a view to effect the plain meaning of their object." *Commonwealth v. Lin*, 2010 MP 2 ¶ 5. Turning to the statutes in question, assault and battery under our criminal code is committed if a person "unlawfully strikes, beats, wounds, or otherwise does bodily harm to another, or has sexual contact with another without the other person's consent." 6 CMC § 1202(a). The statute does not mention cumulative punishments, and thus, we presume that the legislature did not intend to subject defendants to multiple sentences for its violation. An individual commits the crime of violating an order for protection under the Domestic Violence Act "if the person is subject to an order for protection containing a provision listed in section 205(c) or 206(b) or (c), as enacted by Public Law 12-19, codified in 8 CMC §§ 1915(c) and 1916(b) and (c), respectively, and knowingly commits or attempts to commit an act in violation of that provision." 6 CMC § 1464(a). Section 1464(b) enumerates the punishments a person faces for violating the order, which include a term of imprisonment up to one year, a fine up to $2,000, or both. Subsection (b) also states:

> In addition, a person convicted of violating an order for protection, for conduct charged and specially found to be true, as described in (b)(l) or (b)(2) of this section, shall be sentenced to a mandatory minimum term of imprisonment, which may not be suspended, and which *shall run consecutively to any other term of imprisonment*:
>
> > (1) If the person threatens to cause physical injury to any other person, or attempts to cause physical injury to any other person, 10 days; and
> > (2) If the person causes physical injury to any other person, 20 days.

6 CMC § 1464(b) (emphasis added).

¶ 13 On the face of the domestic violence statute, the legislature clearly and unequivocally included language indicating its intent that when a term of imprisonment is imposed for violating an order for protection through actual or threatened physical injury, the imposition of that sentence shall not preclude the imposition of any other sentence, and the sentences shall run consecutively. The legislature was obviously concerned with persons violating an order for protection through actual or threatened violence, and then only being subject to one punishment; the only explanation for it including the "consecutive" clause was to ensure that violators could be punished multiple times for the same conduct. Thus, we interpret the plain meaning of 6 CMC § 1464(b)'s language to allow for the imposition of consecutive sentences even if one of those sentences could potentially be a lesser included offense. The plain meaning

---

or cumulative punishments, so the Court instead relied on the *Blockburger* rule and found that multiple punishments were permissible because the statutes contained different elements. *See also Commonwealth v. Manila*, 2005 MP 17; *Commonwealth v. Crisostomo*, 2005 MP 9; *Commonwealth v. Repeki*, 2004 MP 19; *Commonwealth v. Atalig*, 2002 MP 20; *Commonwealth v. Camacho*, 2002 MP 6.

of the statute cannot reasonably be interpreted to prohibit additional terms of imprisonment being imposed on violators. Therefore, we hold that the legislature intended to subject individuals who violate an order for protection, through actual or threatened physical injury, to multiple punishments if their conduct resulted in other violations of the Commonwealth Code, and the Double Jeopardy Clause's prohibition against multiple sentences for lesser included offenses never arises.[8]

¶ 14 Peter violated the order for protection, 6 CMC § 1464(a), by causing physical injury to Witer when he repeatedly hit her with a broom injuring her leg and foot. The fact that this same conduct also violated 6 CMC § 1202(a) is of no consequence because the legislature clearly and unequivocally intended for a term of imprisonment imposed pursuant to 6 CMC § 1464(b) to run consecutively to any other term of imprisonment.[9] While Peter argues that *Blockburger* prohibits multiple sentences for lesser

---

[8] The Court further finds that it was the legislature's intent to create multiple punishments for crimes of domestic violence. The crime of violating an order for protection did not become a separate offense in the Commonwealth until 2004, when the fourteenth legislature enacted PL 14-9, the Domestic Violence Criminal Act of 2004, codified as 6 CMC §§ 1461-1467. Prior to the enactment of the Domestic Violence Act, violating an order for protection "constitute[d] contempt of court, punishable by up to six months in jail, a $100 fine, or both." 8 CMC § 1926(a). The Commission Comment to the Domestic Violence Act reveals that the legislature was motivated to pass the bill because of the increase in domestic violence incidents in the Commonwealth. The legislature found that the criminal laws in place at the time to combat domestic violence were "inadequate to protect the community, provide redress to the victims, and deter or rehabilitate offenders." 6 CMC § 1461 cmt. sec. 1. The legislature also stated:

> [t]o effectively deter such crimes from being committed in the future, the Legislature finds that a multi-pronged approach is required, including new criminal offenses for addition to the Commonwealth Criminal Code; a mandatory arrest provision for those who commit such crimes, or violate pre-trial release conditions; enhanced penalties for those who commit such crimes, particularly for repeat offenders; and special conditions of release for those who have been charged with such crimes.

Id. Furthermore, the legislature explicitly made certain crimes in the Commonwealth crimes of "domestic violence" if they were committed by one household member against another household member. The legislature found "it is this special relationship between the perpetrator and the victim that gives rise to the special provisions of this Act, including additional conditions of pretrial release, mandatory arrest and enhanced penalties." *Id*; *see also* 6 CMC § 1461(a)(1)(A-K).

Other sections of the Commonwealth Code also provide insight into the legislature's intent. For example, 6 CMC § 4102(f) outlines various mandatory sentencing provisions for defendants convicted of assault and battery in a domestic violence context. It specifically states that the imposed term "may not be suspended, and shall run *consecutively* to any other term of imprisonment." 6 CMC § 4102(f) (emphasis added). Thus, not only does the language of 6 CMC § 1464 demonstrate that it was the legislature's intent to allow for multiple punishments, but the Domestic Violence Act as a whole and other provisions of the Commonwealth Code concerned with domestic violence, demonstrate that the legislature intended that crimes of domestic violence be punished separately and in addition to any other criminal offenses that resulted from the same conduct. Thus, the "same elements" test is inapplicable in the domestic violence context because the legislature has evinced a clear and unequivocal intent to subject perpetrators of domestic violence to multiple punishments for the same conduct in certain situations.

We also note Justice White's discussion in *Dixon* that there is often a different legislative intent in punishing persons who violate court orders versus individuals who violate the criminal law, and that such punishments often do not run afoul of the Double Jeopardy Clause.

[9] The amended information stated that Peter's violation of 6 CMC § 1464(a) was punishable under 6 CMC § 1464(b)(2) and (c)(3). The sentencing order discussed 6 CMC § 1464(b), and sentenced Peter for violating 6 CMC § 1464(a). The order did not mention which part of subsection (b) Peter was sentenced pursuant to. Considering the evidence that Peter caused actual physical injury to Witer, we assume the sentence was imposed pursuant to

included offenses, he fails to realize that *Blockburger* is a rule of statutory construction that is *only* applicable when there is no clear legislative intent regarding the imposition of multiple sentences for the same conduct. Peter fails to explain how it was not the legislature's intent to impose multiple and consecutive terms of imprisonment on defendants who violate orders for protection through actual or threatened physical injury. Thus, there is no violation of the Commonwealth or U.S. Constitution's Double Jeopardy Clause when consecutive sentences are imposed for a single course of conduct that violates an order for protection through actual or threatened physical injury and another provision of the Commonwealth Code, such as 6 CMC § 1202(a), because the legislature intended to impose multiple sentences on such defendants. Therefore, we hold that the trial court properly sentenced Peter to two consecutive one-year terms of imprisonment for violating 6 CMC § 1202(a) and 6 CMC § 1464(a).

III

¶ 15 For the foregoing reasons, we hold that the legislature intended to subject defendants to multiple punishments for violating 6 CMC § 1464. Thus a one-year sentence imposed under this provision and another one-year sentence imposed under 6 CMC § 1202(a) does not violate the Commonwealth or the U.S. Constitution's Double Jeopardy Clause. Accordingly, the order sentencing Peter to consecutive sentences for assault and battery and violating the order for protection is AFFIRMED.

SO ORDERED this 12th day of October, 2010.

/s/
MIGUEL S. DEMAPAN
Chief Justice

/s/
ALEXANDRO C. CASTRO
Associate Justice

/s/
F. PHILIP CARBULLIDO
Justice Pro Tem

---

subsection (b)(2). The difference of whether the trial court sentenced pursuant to (b)(1) or (b)(2) is without significance because Peter was sentenced to the maximum period of one year for a violation of 6 CMC § 1464(a).