

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

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**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,**  
Plaintiff-Appellee,

v.

**FRANCISCO Q. GUERRERO,**  
Defendant-Appellant.

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**SUPREME COURT NO. 2013-SCC-0045-CRM**  
**SUPERIOR COURT NO. 12-0111**

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**ORDER DENYING SECOND MOTION TO RECONSIDER**

**Cite as: 2014 MP 4**

Decided April 1, 2014

Brien Ser Nicholas, Saipan, MP, for Defendant-Appellant Francisco Q. Guerrero  
James B. McAllister, Assistant Attorney General, Office of the Attorney General, Saipan, MP, for  
Plaintiff-Appellee Commonwealth of the Northern Mariana Islands

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; TIMOTHY H. BELLAS, Justice Pro Tem.

CASTRO, C.J.:

¶ 1 Defendant-Appellant Francisco Q. Guerrero (“Guerrero”) files a second motion to reconsider our denial of his stay request. Guerrero’s latest motion argues the trial court (1) wrongly found the Attorney General Investigative Unit Report (“AGIU Report”) did not contain *Brady* material because the report contained materials bearing on his guilt and (2) improperly rested its guilty verdict on the defendant’s decision not to testify. For the following reasons, we DENY Guerrero’s second motion to reconsider.

### I. Standard of Review

¶ 2 We review motions to reconsider for an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice. *Commonwealth v. Guerrero*, 2014 MP 2 ¶ 2.

### II. Facts and Procedural History

¶ 3 After being found guilty of eleven counts of sexual abuse of a minor, Guerrero requested the trial court stay his sentence because the Commonwealth did not turn over alleged *Brady* material—the AGIU Report prepared at or around the time of Guerrero’s arrest. The trial court denied the motion.

¶ 4 Following the denial, Guerrero filed a similar motion with this Court. We denied the motion, but remanded with instructions for the trial court to determine whether the AGIU Report contained *Brady* material. *Commonwealth v. Guerrero*, 2013 MP 16 ¶ 13. If that evaluation revealed *Brady* material, we suggested we would reconsider Guerrero’s motion for a stay. *Id.*

¶ 5 After our decision, but before the trial court could evaluate the AGIU Report, Guerrero filed a motion to reconsider our denial of stay, claiming, among other things, that we did not have authority to remand the AGIU-Report issue for further proceedings. *Commonwealth v. Guerrero*, 2014 MP 2 ¶ 1. We denied Guerrero’s motion to reconsider. *Id.* ¶¶ 13-15.

¶ 6 Now Guerrero again requests we reconsider the stay denial. This latest motion comes on the heels of the trial court’s review of the AGIU Report. According to the trial court’s findings, the report did not include *Brady* materials for three reasons. First, the report did not contain any evidence favorable to Guerrero. Second, Guerrero has now seen the report, but still has not claimed or shown how the evidence would be favorable to his case. Third, the report contained substantially the same information as a later report that the Commonwealth provided to Guerrero. Because Guerrero received the later report, not having the first one did not result in any prejudice.

### III. Analysis

¶ 7 Guerrero offers two arguments: the first familiar, the second new. First, he argues the trial court erred on remand by concluding the Commonwealth’s failure to turn over the first AGIU Report did not

violate the *Brady* rule. Second, Guerrero asserts the trial court’s finding of guilt improperly rested on Guerrero’s refusal to testify. We will discuss each in turn.

A. *Permissible Number of Motions to Reconsider*

¶ 8 Before doing so, however, we must clear some procedural underbrush. Specifically, we must address how many times a defendant may request his or her sentence to be stayed. The question arises because Guerrero’s motion is more properly viewed as Guerrero’s fourth attempt to stay sentencing (once at the trial level, thrice at the appellate level).

¶ 9 The motion is more properly viewed as a renewed motion for a stay for two reasons. First, Guerrero’s motion requests we stay his sentence. Second, Guerrero’s motion does not ask us to reconsider *Commonwealth v. Guerrero*, 2013 MP 16. Instead, Guerrero’s first argument—regarding the AGIU Report—asks us to grant a stay because the trial court’s post-remand finding that the report did not contain *Brady* materials is wrong. Guerrero’s second argument—regarding the trial court’s reliance on Guerrero’s decision not to testify—asks us to grant a stay because the trial court should not have considered Guerrero’s silence as a factor in deciding guilt.

¶ 10 Because Guerrero’s motion is effectively a renewed motion to stay sentencing, we look to NMI Supreme Court Rule 9 to determine whether Guerrero has exhausted his ability to request a stay. The rule, however, is silent on this question. To interpret that silence, we turn to three lodestars of the legal system: fairness, finality, and judicial economy.

¶ 11 These principles stretch in different directions. On the one hand, fairness implores the legal system to dispense justice in every case. *United States v. Morgan*, 346 U.S. 502, 505 (1954) (stating finality must give way to fairness where the “record makes plain a right to relief”). On the other hand, finality and judicial economy recognize that while “[e]veryone is entitled to a full and fair opportunity[,] . . . no one is entitled to multiple opportunities.” *United States v. Keane*, 852 F.2d 199, 201 (7th Cir. 1988). Limiting opportunities is appropriate, even essential, because “[t]he decision the second time around is not necessarily more accurate than the first and comes at great cost to legitimate interests in finality.” *Id.* In turn, “time consumed relitigating one case subtracts from the time available to litigate others.” *Id.* Consequently, courts must balance the desire to bend the rules of finality with the need to “conserve their scarce time to resolve the claims of those who have yet to receive their *first* decision.” *Id.* at 203 (emphasis in original).

¶ 12 To balance these competing concerns, we establish the following rule: a defendant may not file more than one motion to stay sentencing except when compelling circumstances justify further motions. The general prohibition against multiple motions serves the principles of finality and judicial economy by encouraging defendants to bring all of their meritorious claims in a single motion. Meanwhile, the

exception for compelling circumstances provides flexibility for when fairness warrants consideration of a renewed motion to stay sentencing.

### B. *Brady Materials*

¶ 13 Applying this rule here, we invited Guerrero to file a renewed motion for stay if the trial court’s evaluation of the AGIU Report revealed *Brady* material. Accepting our invitation would constitute a compelling circumstance only if the conditions underlying that invitation were met. Thus, we must address whether Guerrero’s first claim is correct—that the Commonwealth’s failure to turn over the original AGIU Report violated the *Brady* rule because the report contained materials bearing on Guerrero’s guilt.

¶ 14 The *Brady* rule grew out of *Brady v. Maryland*, 373 U.S. 83 (1963). Under the rule, due process is violated if the government withholds evidence that is both favorable to the accused and material to either guilt or sentencing. *Id.* at 87. In short, evidence must be both favorable *and* material to violate due process.

¶ 15 Here, the AGIU Report contains no favorable evidence and, therefore, is not *Brady* material. The trial court reviewed the report, but could not find any information favorable to Guerrero. *Commonwealth v. Guerrero*, Crim. No. 12-0111D (NMI Super. Ct. Feb. 24, 2014) (Order on Remand from Supreme Court at 4) (finding no “exculpatory information that would undermine confidence in the ultimate verdict”). In fact, the trial court could not identify any material from the report even discussed during trial by the victim, the victim’s mother, or anyone else interviewed in the reports. *Id.* at 5. Perhaps more telling, following the trial court’s findings, Guerrero had time to scour the report. Despite that time, Guerrero’s motion did not mention a single piece of evidence favorable to his case. *See Commonwealth v. Guerrero*, 2013-SCC-0045-CRM (Appellant’s Motion for Reconsideration Pursuant to Order Denying Stay, 2013 MP 16). Because the trial court did not find any favorable evidence, and Guerrero did not rebut that finding, the conditions attached to our invitation were not met. Thus, Guerrero lacks a compelling reason to relitigate the stay issue.

### C. *Refusal to Testify*

¶ 16 Guerrero’s next claim is that the trial court’s finding of guilt improperly rested on Guerrero’s refusal to testify. In support, Guerrero quotes from the trial court’s findings and judgments at the end of trial.<sup>1</sup> In each instance, the trial court mentioned it did not hear any testimony denying or disputing that the abusive events underlying the guilty verdict took place:

- [The court] did not hear any testimony that disputed or denied that this event occurred. App. F at 223.

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<sup>1</sup> Guerrero provided an excerpt of the trial court’s explanation for why the court found Guerrero guilty. We still do not have a complete record to review.

- The Court finds [the victim's] testimony credible and, again, does not recall hearing any testimony that disputed or denied this event. *Id.* at 224.
- The Court finds [the victim's] testimony credible regarding this incident and, again, does not recall any testimony that disputed or denied that this event happened. *Id.* at 225.
- [A]gain, the Court does not find, recall any testimony that either disputed, substantively, or denied this event happening. *Id.* at 226-27.

¶ 17 Guerrero's second argument fails for two reasons. First, the issue is newly raised. As discussed earlier, Rule 9 is not a vehicle for perpetual relitigation.<sup>2</sup> *Supra* ¶ 12. Second, even if we reached Guerrero's claim, the trial court's language does not necessarily show the trial court rested its verdict on the defendant's decision not to testify. A defendant's testimony is but one way in which he or she can dispute or deny the prosecution's case. A defendant may also present witnesses. Those witnesses could have provided Guerrero with an alibi, such as that Guerrero was in a different location at the time of the alleged events. Or those witnesses could have claimed that the victim may not have been telling the truth. The upshot is that while the trial court's dispute-or-deny language may have been awkward, innocent interpretations for it readily exist. Therefore, at this stage in the appeal, we do not believe the excerpted language constitutes compelling circumstances requiring further review.

#### IV. Conclusion

¶ 18 For the reasons stated above, Guerrero's motion is DENIED.

SO ORDERED this 1st day of April, 2014.

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/s/  
ALEXANDRO C. CASTRO  
Chief Justice

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/s/  
JOHN A. MANGLONA  
Associate Justice

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/s/  
TIMOTHY H. BELLAS  
Justice Pro Tem

<sup>2</sup> Guerrero is free to raise the trial court's dispute-or-deny language during briefing.