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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

FU ZHU LIN,
Defendant-Appellant.

SUPREME COURT NO. 2013-SCC-0009-CRM
SUPERIOR COURT NO. 11-0313

OPINION

Cite as: 2014 MP 6

Decided June 25, 2014

Eden Schwartz, Assistant Public Defender, Office of the Public Defender, Saipan, MP, for Defendant-Appellant Fu Zhu Lin

Margo Brown-Badawy, 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; PERRY B. INOS, Associate Justice.

INOS, J.:

¶ 1 Defendant-Appellant Fu Zhu Lin ("Lin") appeals his conviction for one count of Illegal Possession of a Controlled Substance, 6 CMC § 2142(a). Lin was stopped at a DUI checkpoint because his moped lacked an up-to-date registration sticker. He was then arrested because he did not have a valid

driver's license. A subsequent search of Lin's pockets revealed methamphetamine. Following his conviction for methamphetamine possession, Lin asked the trial court to order a presentence investigation and report ("PSI"). The trial court denied his request. The next day Lin was sentenced to the maximum penalty. Lin challenges his conviction and sentence on four grounds. First, the initial stop was unconstitutional because police lacked reasonable suspicion of wrongdoing. Second, the ensuing search incident to arrest was unconstitutional because the arrest was non-custodial. Third, the trial court abused its discretion when it denied Lin's request to order a PSI. And, fourth, the trial court abused its sentencing discretion because it sentenced Lin to the maximum penalty despite several mitigating factors and no aggravating ones. For the following reasons, we AFFIRM the conviction, but VACATE the sentence and REMAND for further proceedings consistent with this opinion.

I. Factual and Procedural Background

¶ 2 On December 24, 2011, Lin and a female passenger, Mei Ying Qi ("Qi") drove into a DUI checkpoint on Beach Road. Lin's moped had an outdated registration sticker, so a checkpoint greeter waved Lin towards a citation area to verify Lin's registration.[1] Once there, an officer asked Lin for his license and registration. Lin did not have his license, but provided his vehicle's registration, which said it expired in 2005. Because Lin did not have his license, the officer arrested him.

¶ 3 Following the arrest, the officer inspected both Lin's and Qi's helmets. Afterwards, the officer handed the helmets to Qi. The officer then told Lin to empty his pockets and place his personal belongings in his helmet. Those belongings included a pack of cigarettes. After Lin put the cigarettes in the helmet, he quickly plucked the pack from the helmet and handed it to Qi. Qi then concealed the cigarettes under her dress.

¶ 4 When an officer asked to see the cigarettes, Qi refused, so the officer called over a female officer to retrieve the cigarettes. After, the officer in charge of the checkpoint opened the cigarette pack. He discovered four clear Ziploc baggies containing a small quantity of crystal methamphetamine.

¶ 5 Following a trial, Lin was convicted for one count of methamphetamine possession. Lin then asked the trial court to order a PSI. The trial court denied the request because it felt the case was simple:

> Okay. There is only one count of illegal possession of methamphetamine. The maximum, ... [interrupted by counsel for the government] It's five-five years, right? Okay. [] [I]t seems a very straightforward case. I heard the testimony today and the parties are welcome to submit a written recommendation, um, prior to sentencing. [] [T]hey can submit that brief or memorandum or do it orally at tomorrow's sentencing at 9:00 o'clock.

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[1] The greeter did not testify, but the parties agree that Lin was stopped because of the out-of-date registration stickers on his moped's license plate. Lin Opening Br. at 4; Commonwealth Resp. Br. at v. The citer also testified during a suppression hearing that the greeter directed Lin to the citation area because of a registration issue. Tr. at 4. *See also id.* at 11 ("The scooter was in for a registration issue.").

Tr. 153.

¶ 6 The next day, the trial court held a sentencing hearing. At the hearing, Lin presented several potentially mitigating factors. Specifically, Lin noted that he had no prior convictions, a history of gainful employment, and lived in Saipan for twelve years. Lin also highlighted the non-violent nature of his offense and the small amount of methamphetamine involved. Given those factors, Lin asked for an eighteen-month sentence. Meanwhile, the Commonwealth recommended four years. After listening to the recommendations, the trial court sentenced Lin to the maximum, five years:

> The Court heard from the defendant who made a statement not under oath, as is his right to do. Also from defense counsel who recommends, uh, one year and a half and, uh, cites certain issues, among them that defendant has no priors, that he has been a productive member of the community, and that uh-uh, he came here to the Commonwealth for—seeking employment. Defense counsel recommends a term of 18 months, which is a year and a half. Now Office of the Attorney General through Ms. Brown, um, recommends four years, um, not subject to parole, which is part of the statute. At this time the Court will impose the sentence to-on Mr. Lin. Defendant will be given credit for two days. From those two days, the sentence shall impose for the full maximum of five years to be served day to day, without the possibility of parole, probation, early release, work or weekend release, or other similar programs. The two days will be credited to the defendant. Sentence will start immediately.

Tr. 158.

¶ 7 Lin appeals.

II. Jurisdiction

¶ 8 The Supreme Court has appellate jurisdiction over final orders and judgments of the Commonwealth Superior Court. 1 CMC § 3102(a).

III. Standards of Review

¶ 9 Lin presents four issues. First, whether the police had reasonable suspicion of wrongdoing and, therefore, the authority to make the initial stop. We review a trial court's reasonable-suspicion determination de novo. *United States v. Arvizu*, 534 U.S. 266, 275 (2002). Second, whether the post-arrest search exceeded the scope of the search-incident-to-arrest exception in violation of article 1, section 3 of the Commonwealth Constitution or the Fourth Amendment of the United States Constitution. We review constitutional questions de novo. *Commonwealth v. Inos*, 2013 MP 14 ¶ 10. Third, whether the trial court's refusal to order a PSI violated Commonwealth Rule of Criminal Procedure 32. We review a trial court's decision not to order a PSI for abuse of discretion. *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 44. Fourth, whether the trial court's imposition of the maximum sentence violated its sentencing discretion. We review a trial court's sentencing decision for abuse of discretion. *Id.* ¶ 13.

IV. Discussion

¶ 10 Lin's appeal centers on two events: his arrest and his sentencing. We will start with the issues related to the arrest and then move to the issues arising from sentencing.

A. *Outdated Registration Stickers*

¶ 11 Beginning with the acts leading up to Lin's arrest, Lin challenges whether the police had reasonable suspicion to stop him under both article I, section 3 of the Commonwealth Constitution and the Fourth Amendment to the United States Constitution. We review a trial court's reasonable-suspicion determination de novo. *Arvizu*, 534 U.S. at 275.

¶ 12 Because Article I, § 3 is modeled after the Fourth Amendment, *Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands* 6 (1976), we look to federal case law to interpret whether a search is reasonable under both the Commonwealth and the United States Constitutions. *See Commonwealth v. Minto*, 2011 MP 14 ¶ 22 (applying federal case law to construe article I, section 5 of the Commonwealth Constitution because it was "taken directly from section 1 of the Fourteenth Amendment to the United States Constitution").

¶ 13 Article I, section 3 of the Commonwealth Constitution and the Fourth Amendment to the United States Constitution prohibit unreasonable searches and seizures. This protection "extend[s] to brief investigatory stops of persons or vehicles that fall short of traditional arrest." *Arvizu*, 534 U.S. at 273. To make an investigatory stop, the officer must have a reasonable suspicion that criminal activity "may be afoot." *United States v. Sokolow*, 490 U.S. 1, 7 (1989); *accord* 6 CMC § 6103(d). Criminal activity includes traffic infractions. *See Delaware v. Prouse*, 440 U.S. 648, 663 (1979) (indicating it is reasonable to stop a vehicle to check a motorist's driver's license and registration if "there is at least an articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered").

¶ 14 In reviewing whether an officer had a reasonable suspicion, courts require more than a hunch, but much less than a preponderance of the evidence. *Sokolow*, 490 U.S. at 7. To make that determination, courts look at the totality of the circumstances to "see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing." *Arvizu*, 534 U.S. at 273 (quoting *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)). Bases for suspicion include inferences and deductions officers draw from applying their experience and specialized training to the situation at hand. *Arvizu*, 534 U.S. at 273.

¶ 15 Reasonable-suspicion review "'is predominantly an objective inquiry.'" *Ashcroft v. al-Kidd*, 131 S. Ct. 2074, 2080 (2011) (quoting *City of Indianapolis v. Edmond*, 531 U.S. 32, 47 (2000)). Courts consider whether the facts observed by "the detaining officer, at the time, warranted an officer of reasonable caution in believing the [search] was appropriate." *United States v. Cash*, 733 F.3d 1264, 1273 (10th Cir. 2013) (internal citation omitted). "If so, that action was reasonable '*whatever* the subjective intent' motivating the relevant officials." *al-Kidd*, 131 S. Ct. at 2080 (emphasis in original) (quoting *Whren v. United States*, 517 U.S. 806, 814 (1996)). Courts apply an objective—rather than a subjective—

standard for two reasons: the Fourth Amendment "regulates conduct rather than thoughts" and the objective standard "promotes evenhanded, uniform enforcement of the law." *al-Kidd*, 131 S. Ct. at 2080.

¶ 16 Here, Lin argues the stop was unreasonable because Commonwealth law does not expressly make it unlawful to drive without current registration stickers affixed to the vehicle's license plate. Lin's focus is too narrow legally and factually. Legally, the proper focus is whether, based on the totality of the circumstances, a reasonable officer in the greeter's position would have an articulable and reasonable suspicion that Lin had violated the law—not just the rules regulating registration stickers. Factually, the greeter did not limit his suspicion to the outdated registration stickers as a legal violation in and of itself. Instead, the greeter instructed the citer via radio "to verify that [the] scooter was indeed [] not registered or expired." Tr. at 18.

¶ 17 Keeping the proper focus in mind, Commonwealth law makes failing to renew a vehicle's registration a misdemeanor. Title 9 CMC § 3101 requires motor vehicle owners to renew their vehicles annually: "All privately-owned motor vehicles shall be registered annually during the same calendar month in which the vehicle was registered during the previous year. Every motor vehicle owner shall be responsible for renewal of vehicle registration . . . ." 9 CMC § 3101. Meanwhile, § 3113 makes it a misdemeanor for any person to violate § 3101: "Except as otherwise provided in this title, any person who violates the provisions of [§§ 3101-14] shall be guilty of a misdemeanor . . . ." 9 CMC § 3113. Together, these statutes make the failure to renew one's registration a misdemeanor.

¶ 18 Because it is unlawful for a vehicle owner not to renew the vehicle's registration, the next question is whether a reasonable officer observing a registration sticker several years out of date would suspect the driver had not kept the vehicle's registration current. This question has two components. First, because 9 CMC § 3101 only applies to motor vehicle owners, we must decide whether a reasonable officer would suspect the driver owned the vehicle. And, second, we must determine whether a reasonable officer would suspect that out-of-date registration stickers meant the vehicle's registration was similarly out of date. *See Prouse*, 440 U.S. at 663 (suggesting police may stop a vehicle if "there is at least an articulable and reasonable suspicion that . . . an automobile is not registered").

¶ 19 We answer both in the affirmative. First, it is reasonable for an officer to suspect that an adult driving a non-commercial vehicle also owns the vehicle because private vehicles, on average, are typically driven by their owner. Second, it is reasonable for an officer to suspect that a vehicle with out-of-date registration stickers also has expired registration because the two conditions are linked. When vehicle owners renew their registration, they receive a corresponding registration sticker that runs for the same period as the registration renewal. NMIAC 150-50.1-520. As a result, if the registration sticker is out of date, especially years out of date, it is a reasonable deduction that the vehicle registration is similarly out of date.

¶ 20 Applying that reasoning here, the greeter had reasonable suspicion for the initial stop. At the DUI checkpoint, the greeter observed Lin's moped. The registration stickers on the moped's license plates were several years out of date. The outdated stickers, in turn, were enough for an officer to reasonably suspect that Lin had not kept his moped's registration up-to-date and, therefore, had violated Commonwealth law. Because that suspicion was reasonable, the initial stop was constitutional.

B. *Constitutionality of the Search*

¶ 21 The second issue is whether the police unconstitutionally searched Lin following his arrest for not having a driver's license. We review constitutional questions de novo. *Commonwealth v. Inos*, 2013 MP 14 ¶ 10.

¶ 22 Although the Fourth Amendment to the United States Constitution generally requires a warrant before conducting a search, the United States Supreme Court has carved out exceptions to the warrant requirement. *Illinois v. McArthur*, 531 U.S. 326, 330 (2001). One of those exceptions is the search incident to arrest ("SITA"). *See* 6 CMC § 6201(a) (permitting officers to search for "all offensive weapons which the arrested person may have about his or her person" as well as "the instruments, fruits, and evidences of the criminal offense for which the arrest is made"). The SITA exception permits police to search a person placed under custodial arrest[2] at the scene of the arrest, *United States v. Robinson*, 414 U.S. 218, 234 (1973), but not a person who was merely given a citation, *Knowles v. Iowa*, 525 U.S. 113, 117-19 (1998). The distinction arises from the dual rationales supporting the SITA exception: (1) the need to disarm suspects before taking them into custody and (2) the need to preserve evidence for later use at trial. *Id.* at 118. These concerns exist when a police officer takes someone into custody, but not when a police officer gives someone a citation and then lets them leave scene. *Id.* at 117-19.

¶ 23 Highlighting the SITA exception's limited scope, Lin argues the search in this case exceeded that scope in two ways. First, Lin claims that the SITA exception does not apply because the arrest was non-custodial. The arrest was non-custodial, according to Lin, because 9 CMC §§ 1301-12 limit an officer's authority to take someone into custody only if the person refuses to sign a promise to appear. Section 1306 provides that if a "person charged with the violation [] give[s] his or her written promise to appear in court . . . [the police] may not take the person into physical custody for the violation." Here, Lin did not refuse to sign a promise to appear, thus, § 1306 prevented the officer from taking Lin into custody. Second, Lin argues that even if the SITA exception applies, the exception did not authorize the police to open the cigarette pack both because the police did not claim they were in fear of Lin and because the pack could not contain instruments, fruits, or evidences of the crime Lin was arrested for—failure to furnish satisfactory evidence of identity.

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[2] A custodial arrest is "one where an officer would arrest a subject and subsequently transport him to a police facility for booking . . . ." *United States v, Robinson*, 414 U.S. 218, 223 n.2 (1973) (internal quotation omitted).

¶ 24 Lin's first argument—that police did not have authority to take him into custody—fails because he misconstrues the arrest authority established in 9 CMC §§ 1301-12 for traffic violations. Section 1302 governs when an officer *must* arrest someone. 9 CMC § 1302. This includes, as Lin points out, when a person refuses to give a written promise to appear. *Id.* § 1302(b). But the power to arrest does not end there. Police may also arrest someone for violating the vehicle code if one of four additional conditions is met. *Id.* § 1303. One of these conditions is the failure to "furnish satisfactory evidence of identity." *Id.* § 1303(a). In other words, a person may be taken into custody if they violate Title 9 and "do[] not furnish satisfactory evidence of identity . . . ." *Id.* Here, Lin violated § 3101 (requiring vehicle owners to renew their vehicles annually). Lin also failed to furnish satisfactory evidence of identity because he did not have a license or other identification with him at the time of the stop. Because Lin violated Title 9 and did not furnish satisfactory evidence of identity, § 1303(a) empowered the police to take Lin into custody.

¶ 25 Lin's next argument—that police needed to profess fear before searching Lin—likewise fails because the SITA exception does not turn on whether police professed fear at the scene of the arrest. *Robinson*, 414 U.S. at 236. Once a person has been validly arrested, police may search an arrestee's person and effects for weapons and evidence connected to the crime, whether or not police profess fear. *Virginia v. Moore*, 553 U.S. 164, 177 (2008) (holding "[t]he interests justifying search are present whenever an officer makes an arrest"). For example, in *Robinson*, the United States Supreme Court held that "the long line of authorities of this Court" as well as "the history of practice in this country and in England" had settled that if a custodial arrest is valid, then searches of an arrestee's person, including their clothing and other personal effects, are "reasonable" and require "no additional justification." 414 U.S. at 235.

¶ 26 Lin's final argument is facially correct: The methamphetamine was not an offensive weapon or an instrument, fruit, or evidence of the offense police originally arrested him for (driving without a license). But Lin's argument does not mean the methamphetamine was inadmissible. To the contrary, an arresting officer conducting a valid search incident to arrest need not ignore contraband unrelated to the arresting offense. *See Michigan v. Long*, 463 U.S. 1032, 1050 (1983) (holding that an officer may seize unrelated contraband discovered during a legitimate *Terry* search).

¶ 27 The evidence is admissible for the same reason that evidence discovered in plain view is admissible. Under the plain-view exception, an officer may search, and seize, contraband that "is left in open view and is observed by a police officer from a lawful vantage point." *Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993). The evidence is admissible because "there has been no invasion of a legitimate expectation of privacy and thus no 'search' within the meaning of the Fourth Amendment—or at least no search independent of the initial intrusion that gave the officers their vantage point." *See id.* (reasoning that the plain-view doctrine's underpinnings supported the seizure of contraband during a *Terry* search).

¶ 28 Applying those reasons to the SITA exception, an arrestee has no legitimate expectation of privacy regarding items on his or her person that could either be or contain an offensive weapon or an instrument, fruit, or evidence of the offense. An arrestee has no legitimate expectation because the SITA exception authorizes the search of that class of items. Consequently, if an officer discovers contraband during a search incident to arrest that is neither a weapon nor an instrument, fruit, or evidence of the offense the person was arrested for, the evidence is nonetheless admissible so long as the search was within the SITA exception's scope. *See id.* at 375-76 (applying the same test to *Terry* searches). Here, the search of the cigarette pack falls within the SITA exception's scope because the pack could have contained a weapon, such as a razor blade or a pocketknife.

¶ 29 Finally, the methamphetamine would also be admissible under the inevitable-discovery doctrine. Under this doctrine, unlawfully gained evidence will not be suppressed if the same evidence would have inevitably been discovered absent the violation. *Nix v. Williams*, 467 U.S. 431, 444 (1984) (holding evidence should not be suppressed "[i]f the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means"). Here, police would have constitutionally discovered the methamphetamine during a properly conducted inventory search because they would have inventoried Lin's personal effects.[3] *See United States v. Cartwright*, 630 F.3d 610, 613-16 (7th Cir. 2010) (holding that, even if the search exceeded the SITA exception, evidence was admissible because it would have inevitably been discovered during a later inventory search); *United States v. Ruckes*, 586 F.3d 713, 719 (9th Cir. 2009) (same).

¶ 30 In sum, Lin's arrest was a valid custodial arrest. As part of that arrest, the police could search Lin's person for weapons and other instruments, fruits, or evidences of the offense. Because the cigarette pack falls within that category, the search was constitutional.

C. *Failure to Order Presentence Investigation and Report*

¶ 31 Having resolved Lin's challenges about the initial stop, we move to Lin's sentencing. Lin's first sentencing issue is whether the trial court abused its discretion by denying Lin's request for a PSI. *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 44. An abuse of discretion occurs when 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 NMI 79, 84 (1992).

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[3] The inventory-search exception permits police to conduct a stationhouse search of an arrestee's personal effects so long as the search is "part of the routine procedure incident to incarcerating an arrested person . . . ." *Illinois v. Lafayette*, 462 U.S. 640, 648 (1983). The exception is justified by "three distinct needs: the protection of the owner's property while it remains in police custody; the protection of the police against claims or disputes over lost or stolen property; and the protection of the police from potential danger." *South Dakota v. Opperman*, 428 U.S. 364, 369 (1976) (internal citation omitted).

¶ 32 In most cases, a court should order a PSI. *See* NMI R. CRIM. P. 32(c)(1) (establishing PSIs as the default procedure). A court need not, however, if the defendant waives the PSI or "the court finds that there is in the record information sufficient to enable the meaningful exercise of sentencing discretion, and the court explains the finding on the record." *Id.* When a court finds the record sufficient to enable a meaningful exercise of sentencing discretion, the court's explanation for that finding must detail why a PSI would not be necessary to making a careful and individualized sentence that considers factors beyond the crime itself. *See id.* 32(c)(2) (requiring presentence reports to include personal characteristics and circumstances that "may be helpful in imposing sentence").

¶ 33 Two federal cases typify how courts should proceed when declining to order a PSI.[4] In *United States v. Latner*, the trial court chose not to order a PSI. 702 F.2d 947, 949 (11th Cir. 1983). The trial court instead "asked [the defendant] numerous questions about his educational, military, financial and family background." *Id.* The court also had the defendant and his attorney review the defendant's rap sheet and gave the defendant two more chances to make additional statements. *Id.* Following the questioning, the court explained it had asked all the questions on the form the probation office used to conduct PSIs. *Id.* In short, the court replicated the PSI in open court. Similarly, in *United States v. Whitworth*, the trial court chose not to order a presentence investigation because it had learned everything the report would contain—and more. 856 F.2d 1268, 1288 (9th Cir. 1988). The trial court explained that "the trial ha[d] witnessed the production of materials relating to virtually every aspect of the defendant's life; his career; his personality, and beliefs. Rarely has a person's life been held out to public inspection in quite such a manner . . . ." *Id.* As a result, "there [was] literally nothing a presentence investigation could turn up which ha[d] not already been well documented, nothing a presentence report could relate which [was] not presently known." *Id.* In both *Latner* and *Whitworth*, the trial courts supported their refusal to order a PSI by explaining that the record contained sufficient information about the defendant beyond the crime itself to make a careful and individualized sentence.

¶ 34 Turning to our case law, we have only addressed when a trial court may refuse to order a PSI in one case. In *Commonwealth v. Yi Xiou Zhen*, the defendant was convicted of promoting prostitution. 2002 MP 4 ¶ 8, and sentenced without a PSI, *id.* ¶ 44. The defendant did not request a PSI before sentencing, but argued on appeal that the trial court abused its discretion by not ordering a PSI. *Id.* We agreed with the defendant "that it is ordinarily desirable to obtain a presentence investigation and report[,]" but disagreed that the trial court abused its discretion because the record contained "extensive testimony about the crime *and* [the defendant's] background." *Id.* (emphasis added).

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[4] When interpreting the Commonwealth Rules of Criminal Procedure, interpretations of similar Federal Rules of Criminal Procedure are persuasive. *Commonwealth v. Laniyo*, 2012 MP 1 ¶ 9.

¶ 35 Our predecessor court offered similar reasoning in *Commonwealth v. Ahn*, 3 CR 35, 41 (Dist. Ct. App. Div. 1987). In *Ahn*, the defendant was convicted of several misdemeanors following a four-day trial. *Id.* Because the convictions were only misdemeanors, the trial court chose not to order a PSI. *Id.* The Appellate Division affirmed because while it is "better practice to order that a report be prepared prior to sentencing[,]" *id.* at 42, the trial court had a meaningful record to review. *Id.* at 43. In reaching that result, the Appellate Division stated that presentence reports contain four things: (1) the defendant's prior criminal record; (2) a statement regarding the circumstances of the offense and the defendant's behavior; (3) a victim-impact statement; and (4) any other information relevant to sentencing. *Id.* at 42. The Appellate Division then noted that the record contained information regarding each of the four categories. *Id.* at 43. First, testimony at trial showed the defendant had no criminal record. *Id.* Second, the trial itself "showed the circumstances surrounding the offense and, presumably, anything affecting [the] defendant's behavior." *Id.* Third, the trial court knew the impact of the crime on the victims. *Id.* And, finally, the trial court heard from the defendant and several character witnesses. *Id.* This testimony covered the "defendant's education and family background, as well as [his] business, social, and religious activities." *Id.* In short, the trial court did not abuse its discretion because the record already contained the information a PSI would have revealed.

¶ 36 These cases suggest that while PSIs are not always mandatory, the information that an investigation and report would contain are. In fact, that information is essential. *See United States v. Turner*, 905 F.2d 300, 301 (9th Cir. 1990) (calling PSIs an essential part of proper sentencing); *United States v. Burch*, 873 F.2d 765, 767 (5th Cir. 1989) ("[T]he presentence report and the defendant's objections to that report are essential considerations in proper sentencing. The report forms the factual basis for the judge's sentencing determination.").

¶ 37 The importance of the information contained in PSIs flows from a bedrock principle of sentencing: each sentence must be "careful and individualized." *United States v. Dinapoli*, 519 F.2d 104, 108 (6th Cir. 1975); *see also Peppers v. United States*, 131 S. Ct. 1229, 1240 (2011) (emphasizing that "'[h]ighly relevant – if not essential – to the selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics'" (quoting *Williams v. New York*, 337 U.S. 241, 247 (1949))).

¶ 38 The information contained in a PSI contributes to careful and individualized sentencing in three ways. First, the information supplies a sentencing judge with "facts and insights into both the background[] and the potentialities (for good or evil) of" defendants. *United States v. Long*, 656 F.2d 1162, 1165 (5th Cir. 1981). Second, it is "'essential to procedural due process.'" *Turner*, 905 F.2d at 301 (quoting Federal Sentencing Guideline Chapter 6A, Introductory Commentary). And, third, it increases

"'accuracy and uniformity of sentencing.'" *Id.* (quoting Federal Sentencing Guideline Chapter 6A, Introductory Commentary).

¶ 39 Against that legal backdrop, Lin requested a PSI. The trial court denied the request because the case was straightforward. The following day, the court held a sentencing hearing in which the defendant presented mitigating factors. Afterwards, the court sentenced Lin to the statutory maximum.

¶ 40 Denying Lin's request for a PSI was proper, according to the Commonwealth, because the case was straightforward. The Commonwealth claims a PSI is necessary only if the crime underlying the conviction was complex. In support, the Commonwealth cites to *Viramontes-Medina v. United States*, which upheld a sentence even though the trial court did not order a PSI. 411 F.2d 981, 982-83 (9th Cir. 1969).

¶ 41 The Commonwealth misreads both *Viramontes-Medina* and NMI Rule of Criminal Procedure 32 ("Rule 32"). In *Viramontes-Medina*, the court did not disregard the requirements of Rule 32. Instead, it upheld the sentence because the trial court sentenced the defendant to the statutory minimum. *Id.* at 982. In other words, even though the trial court erred, the error was harmless because the defendant could not have received a lighter sentence. As for Rule 32, a court may not refuse to order a PSI merely because the criminal aspect of the case is straightforward. Straightforwardness of the criminal activity is not sufficient because the reports are not designed to analyze the complexity of the case. Rather, the reports are to ensure "careful and individualized" sentencing of the defendant that includes evaluation of factors beyond the crime itself. *Dinapoli*, 519 F.2d at 108.

¶ 42 Given the purpose of PSIs, the court erred. Rule 32 compels courts to explain why a PSI would not be necessary to making a careful and individualized sentence that considers factors beyond the crime itself. To do that, the court needed to either explain how the record already contained the information that a PSI would have provided, as in *Whitworth*, or conduct a de facto presentence investigation on the record before denying the request, as in *Latner*. Under either approach, the court needed to demonstrate the record contained information about the defendant beyond the crime itself that would enable the court to make a careful and individualized sentence.

¶ 43 Because the bare assertion was insufficient, we must next decide whether the defendant's opportunity to present mitigating factors during the sentencing hearing cured the insufficiency.

¶ 44 Rule 32 requires a meaningful record and an adequate explanation for not ordering a PSI *contemporaneously with* refusing to order them. *See Turner*, 905 F.2d at 301 (requiring strict compliance with Federal Rule 32). The rule has three main benefits. The first requirement (a meaningful record paired with an adequate explanation) demonstrates that the court complied with Rule 32. The second requirement (contemporaneousness) provides a defendant notice and an opportunity to object to sentencing information before the court imposes a sentence. *See* Federal Rules of Criminal Procedure Act

of 1975, Pub. L. No. 94-64, 89 Stat. 376 (1975) (amending Rule 32 to require that defendants receive advance notice of material information pertinent to sentencing); *United States v. Lovelace*, 565 F.3d 1080, 1091-92 (8th Cir. 2009) (holding that a district court "erred by relying on information at sentencing that was not presented in advance to the defendant, in accordance with Rule 32"). And, finally, each requirement helps develop the record and, therefore, aids appellate review. *Ishimatsu v. Royal Crown Ins. Corp.*, 2012 MP 17 ¶ 21 (noting that "greater analysis and discussion . . . facilitate[s] more effective review of trial court orders").

¶ 45 Here, the error was not cured by the sentencing hearing because Rule 32 requires strict compliance. *Turner*, 905 F.2d at 301 (requiring strict compliance with Federal Rule 32). Strict compliance means the court needed to provide an adequate explanation why a PSI was not necessary at the time it refused to order the PSI. Because the court did not satisfy Rule 32, and Rule 32 requires strict compliance, the sentencing hearing did not cure the error.

¶ 46 Because of that error, we vacate the sentence. *Turner*, 905 F.2d at 302 (vacating a sentence, and remanding for resentencing, because the trial court did not satisfy Federal Rule 32(c)(1)).

D. *Imposition of the Maximum Sentence*

¶ 47 The final issue is whether the trial court abused its discretion by imposing the maximum sentence. Lin argues that the trial court abused its sentencing discretion because it allegedly did not consider Lin's mitigating factors. Instead, the court reflexively ordered the maximum sentence.[5] That reflexive sentence, according to Lin, violated the principle that the punishment should fit the offender as well as the crime.

¶ 48 It is correct that a sentencing court should tailor its sentence to the circumstances. *Supra* ¶ 37. Those circumstances include, among others, the nature of the crime, the need for deterrence or retribution, and the characteristics of the defendant such as remorsefulness, criminal history, and the ability to be rehabilitated. Given that these circumstances change from case to case, one would expect the severity of sentences to ebb and flow with those changed circumstances. *See Williams v. New York*, 337 U.S. 241, 247 (1949) (rejecting that every crime in a like legal category calls for an identical punishment).

¶ 49 Despite the importance of individualized sentencing, it is premature to reach Lin's claim for two reasons. First, we have already vacated and remanded for resentencing on other grounds. Second, the sentencing order and hearing do not provide findings sufficient for us to meaningfully review the sentence.

¶ 50 Under 6 CMC § 4115, a trial court must provide specific findings supporting the sentence imposed:

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[5] In support, Lin cited one drug case and several Saipan Tribune articles that allegedly showed a pattern of maximum sentences. Future challenges to this alleged pattern should include more sentencing orders and less newspaper articles.

> The court, in imposing any felony sentence, shall enter specific findings why a sentence, fine, alternative sentence, suspension of a sentence, community service or probation, will or will not serve the interests of justice.

6 CMC § 4115. In other words, the court must explain its reasoning for the sentence on the record. *Peugh v. United States*, 133 S. Ct. 2072, 2080 (2013) ("A [trial] court must explain the basis for its chosen sentence on the record.").

¶ 51 The reasons for this requirement are two-fold. First, the statute's requirement subjects the sentence to public scrutiny. Second, the statute creates a record for the Supreme Court to review. *See Ishimatsu* 2012 MP 17 ¶ 21. Together, the statute requires two levels of accountability to a court's otherwise broad sentencing discretion: one through transparency, the other through judicial oversight.

¶ 52 Here, we cannot adequately assess whether the trial court abused its discretion because the court did not explain its reasons for imposing the maximum sentence rather than a lesser one. Instead, at both the sentencing hearing and in the sentencing order, the court summarized the parties' arguments, stated it had reviewed the record, and then issued a sentence without saying why the defendant deserved that particular sentence rather than a sentence at some other point in the statutory range. The trial court's lack of analysis makes review of the sentencing question premature; thus, we do not reach it.

V. Conclusion

¶ 53 For the stated reasons, we AFFIRM the conviction, but VACATE the sentence and REMAND for further proceedings consistent with this opinion.

SO ORDERED this 25th day of June 2014.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
PERRY B. INOS
Associate Justice