

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

JIN SONG LIN,
Defendant-Appellant.

Supreme Court No. 2014-SCC-0008-CRM

Superior Court No. 12-0122

OPINION

Cite as: 2016 MP 11

Decided September 12, 2016

Teresita J. Sablan, Assistant Attorney General, Office of the Attorney General,
Saipan, MP, for Plaintiff-Appellee.

Colin M. Thompson and Robert T. Torres, Saipan, MP, for Defendant-Appellant.

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; PERRY B. INOS, Associate Justice.

MANGLONA, J.:

¶ 1 Defendant-Appellant Jin Song Lin (“Lin”) appeals the trial court’s sentencing decision. He seeks to vacate his sentence arguing (1) the trial court mechanically imposed the maximum term of imprisonment without sufficiently individualizing his sentence; and (2) the trial court failed to provide specific findings supporting his sentence and denied parole eligibility. For the reasons stated below, we VACATE the sentence and REMAND this matter for resentencing.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 Lin was charged with various crimes but pled guilty to Sexual Abuse of a Minor in the Third Degree. The trial court accepted the plea and dismissed all the other remaining charges with prejudice.

¶ 3 At the sentencing hearing, the parties presented mitigating and aggravating circumstances. The trial court heard statements from Lin’s wife about the family hardship resulting from his incarceration, and about Lin’s good character from his landlord. Lin acknowledged his fault and informed the trial court that he entered into a civil settlement of \$80,000 and paid the initial settlement amount. The trial court reviewed the presentence investigation report (“PSI”) and video footage of the crime. At the close of the sentencing hearing, the trial court imposed the maximum prison sentence of five years without the possibility of parole, “as [the] case involves sexual abuse in the third degree of a 13-year-old female child” Tr. 19:15–16.

¶ 4 Lin timely appeals his sentence.

II. JURISDICTION

¶ 5 We have jurisdiction over Superior Court final judgments and orders. NMI CONST. art. IV, § 3.

III. STANDARDS OF REVIEW

¶ 6 Lin argues the trial court erred by (1) mechanically sentencing him to the statutory maximum without considering mitigating factors; (2) failing to individualize the sentence; (3) failing to provide specific findings in support of the sentence; and (4) denying parole eligibility. We review all four issues on the trial court’s sentencing under the abuse of discretion standard. *Commonwealth v. Borja*, 2015 MP 8 ¶ 20.

IV. DISCUSSION

A. Mechanical Sentencing

¶ 7 Lin asserts the sentencing judge has a preconceived policy of sentencing every offender to the statutory maximum. He argues that he was sentenced to the maximum term of imprisonment based on the judge’s reflexive attitude, failing to take into full account mitigating factors.

¶ 8 Whether the trial court imposed a mechanical sentence is an issue of first impression, and therefore, we will look to persuasive authority from other jurisdictions. *Commonwealth v. Lot No. 353 New G*, 2012 MP 6 ¶ 16.¹ A trial court’s sentencing process is reviewed under the abuse of discretion standard. *Commonwealth v. Borja*, 2015 MP 8 ¶ 20. Reversal is appropriate if the trial court failed to exercise its discretion at all in sentencing. *Woosley v. United States*, 478 F.2d 139, 144 (8th Cir. 1973).

¶ 9 The mechanical sentencing rule prohibits trial courts from imposing a predetermined sentence without considering the defendant’s individual factors and circumstances. *United States v. Hernandez-Reyes*, 114 F.3d 800, 802 (8th Cir. 1997). We stated in *Commonwealth v. Fu Zhu Lin* that “[defendants’] circumstances change from case to case, [and therefore,] one would expect the severity of sentences to ebb and flow with those changed circumstances.” 2014 MP 6 ¶ 48. Public interest demands that punishment not only fit the crime but also the offender because rehabilitation is an important aspect of sentencing. *United States v. Lopez-Gonzales*, 688 F.2d 1275, 1277 (9th Cir. 1982). The trial court has an obligation to impose individualized sentences based on mitigating and aggravating factors particular to the offender. *Williams v. Oklahoma*, 358 U.S. 576, 585 (1959). Therefore, reviewing courts have consistently vacated predetermined sentences reflecting a reflexive policy of imposing a statutory maximum for a particular offense at all times. *E.g.*, *Lopez-Gonzales*, 688 F.2d at 1277 (vacating sentence when the sentencing judge stated that he automatically imposes the maximum punishment for aliens who are apprehended after fleeing); *United States v. Clements*, 634 F.2d 183, 187–88 (5th Cir. 1981) (remanding for an evidentiary hearing because there were seven other instances in which the same judge imposed the maximum punishment for drug offenses); *United States v. Hartford*, 489 F.2d 655, 655–56 (5th Cir. 1974) (remanding for resentencing where the judge’s remark reflected a predetermined policy of imposing the maximum sentence for drug offenders).

¶ 10 In determining whether a sentence is mechanically imposed, we consider the three factors established by the Eighth Circuit in *Woosley v. United States*. 478 F.2d at 140–43. The *Woosley* factors are: 1) the judge’s prior record of imposing the maximum imprisonment term for a specific offense; 2) the judge’s comments indicating a predetermined policy of issuing the statutory maximum for a particular crime; and 3) the lack of reasons for the severity of punishment other than the judge’s reflexive attitude. *Id.*; *see also Island v. United States*, 946 F.2d 1335, 1338 (8th Cir. 1991) (discussing and applying the *Woosley* factors). “Whether the *Woosley* rule applies to a particular sentence

¹ The issue of mechanical sentencing has been previously raised in this Court, yet we have not had to address the issue on the merits. *E.g.*, *Commonwealth v. Salasiban*, 2014 MP 17 ¶ 9 n. 4 (leaving the issue of mechanical sentencing undecided based on the trial court’s failure to order a PSI); *Commonwealth v. Fu Zhu Lin*, 2014 MP 6 ¶ 49 (declining to analyze whether the sentence was mechanically imposed because the sentence was vacated and remanded on other grounds).

requires examination of the entire sentencing process and the comments of the district court in their full context.” *United States v. Holman*, 541 Fed. Appx. 713, 715 (8th Cir. 2013) (internal quotation marks and citations omitted). The existence of any one of *Woosley* factors may be dispositive in finding a mechanical sentence if the sentencing process is based on a rigid policy. *See, e.g., Lopez-Gonzales*, 688 F.2d at 1277 (holding that the judge’s comment reflected a predetermined policy of imposing a maximum sentence to aliens who endanger the lives of others); *Clements*, 634 F.2d at 187 (finding that the sentencing judge’s prior record showed a reflexive attitude of imposing the statutory maximum to drug offenders); *Woosley*, 478 F.2d at 140, 143–45 (finding mechanical sentence when the sentencing judge automatically imposed maximum sentences for defendants refusing induction into military). However, the existence of *Woosley* factors do not mandate finding a mechanical sentence if the trial court abides by the policy of individualizing the sentence. *See Island*, 946 F.2d at 1335 (concluding that the lower court did not employ a mechanical approach in sentencing the defendant although the sentencing judge made remarks reflecting a preconceived policy and had a prior record of imposing maximum sentences to drug offenders); *Holman*, 541 Fed. Appx. at 716 (concluding the district court did not engage in mechanical sentence although the court stated it has a policy of generally giving statutory maximum against defendants committing crimes in prison).² In short, we must examine the sentencing process in its entirety, including “all the comments and actions of the sentencing judge, in their full context...” *Island*, 946 F.2d at 1338.

¶ 11 Lin argues the trial court failed to exercise its discretion in imposing its sentence. He asserts his sentence was based on the judge’s preconceived policy of imposing the maximum term of imprisonment to every offender and was made without considering individual factors. To evidence a rigid sentencing policy, he offers thirty-two trial court orders issued by the same judge in various criminal cases. In each case, the defendants received the statutory maximum sentence. Lin cites to *Clements* to support his assertion that judge’s prior sentencing record reflects a mechanical attitude. In *Clements*, the defendant challenged the legality of his sentence arguing that the judge had a predetermined policy of giving the maximum punishment for drug offenders. *Clements*, 634 F.2d at 185. In support of the appeal, the defendant pointed to seven other instances where the same judge gave the statutory maximum for drug-related offenses. The court in *Clements* remanded the sentence because the judge’s prior record reflected a mechanical sentencing policy and the court failed to consider mitigating or aggravating circumstances. *Clements*, 634 F.2d at 187–88.

¶ 12 Here, Lin presented thirty-two orders in support of his argument that the judge has a mechanical attitude towards sentencing. Out of the thirty-two

² The court in *Holman* concluded that the sentence was not mechanically imposed because the district court considered the defendant’s individual circumstances. *Holman*, 541 Fed. Appx. at 715–16.

orders, only seven of them were for sexual offenses. The seven orders were issued within a span of a year, not within a day as in *Clements*. Because the thirty-two orders are not all for sexual crimes, and the seven, which are for sexual offenses, have been issued intermittently, we are not persuaded that the trial court record evinces a mechanical sentencing policy comparable to *Clements*.

¶ 13 Furthermore, unlike *Clements*, the record below shows that the judge reviewed the mitigating and aggravating factors before imposing the statutory maximum. When the record reflects that the judge “[gave] some thought” in the imposition of punishment, we cannot say the trial court imposed a mechanical sentence. *Island*, 946 F.2d at 1338. In *Island*, the defendant pled guilty to a drug offense. At the sentencing hearing, the court allowed the defendant to present letters and witnesses on his behalf and to speak about his individual circumstance. But when the judge asked the defendant to reveal his drug source and the defendant refused to answer, the judge commented that he “bargained for the maximum sentence.” *Id.* at 1337. At the conclusion of the hearing, the judge imposed the maximum term of imprisonment. The defendant appealed arguing the sentence was mechanically imposed. In support, he presented five other cases in which the same judge imposed the maximum term of imprisonment on drug offenders who refused to reveal their sources. Additionally, the defendant asserted the judge’s comment that he “bargained for the maximum sentence” was evidence of a reflexive attitude. *Id.* at 1338. In affirming the lower court’s judgment, the reviewing court held that the sentencing judge did not employ a mechanical approach at sentencing because a presentence investigation was conducted and the judge read the letters written on the defendant’s behalf and heard testimony from the defendant and his witnesses. *Id.* After reviewing the entire sentencing process, including the judge’s decision to not impose a fine against the defendant, the court in *Island* did not find an abuse of discretion because the record indicated the judge contemplated the punishment. Further, the court concluded there were other factors to validate the severity of the defendant’s sentence. *Id.* at 1338–39.

¶ 14 Like the court in *Island*, we conclude that the trial court did not employ a mechanical approach in its sentencing decision. The trial court reviewed the contents of the PSI, heard testimony from Lin and his witnesses, and received mitigating and aggravating factors. Additionally, the judge indicated that his decision was based on the “charges and arguments as well as [the] videotape, statements from the parties as well as Mr. Lin in particular, as this case involves sexual abuse in the third degree of a 13-year-old female child” Tr. 19:13–16. The trial court’s comments indicate the judge contemplated the evidence before issuing its sentence. Accordingly, in view of the sentencing process in its full context, we conclude the trial court did not fail to exercise its discretion in sentencing Lin.

B. Individualized Sentence

¶ 15 We next consider whether the imposition of a maximum sentence was an

abuse of discretion. *Borja*, 2015 MP 8 ¶ 35. In so doing, we give great deference to the trial court’s sentencing decision. *See Commonwealth v. Palacios*, 2014 MP 16 ¶ 12 (“Our review begins with the basic proposition that the trial court ‘enjoy[s] nearly unfettered discretion in determining what sentence to impose.’” (quoting *Commonwealth v. Camacho*, 2002 MP 6 ¶ 135)). We review whether the sentence was sufficiently individualized. *See Borja*, 2015 MP 8 ¶ 38 (“[T]he trial court has a duty to mete out individualized sentences.”). A reversal is proper “if no reasonable person would have imposed the same sentence.” *Commonwealth v. Palacios*, 2014 MP 16 ¶ 12 (citing *Banks v. State*, 732 So. 2d 1065, 1068 (Fla. 1999); *State v. Branch*, 919 P.2d 1228, 1235 (Wash. 1996); *State v. Gerrard*, 584 P.2d 885, 887 (Utah 1978)).

¶ 16 Individualizing a sentence requires the trial court to consider “both the crime and the offender—it must examine and measure the relevant facts, the deterrent value of the sentence, the rehabilitation and reformation of the offender, the protection of society, and the disciplining of the wrongdoer.” *Borja*, 2015 MP 8 ¶ 39 (citing *Williams v. New York*, 337 U.S. 241, 247–48 (1949)). We held in *Borja* that a sentence lacks sufficient individualization if the imposition of the maximum punishment is based on the act of the crime alone. *Id.* ¶ 40. There, we determined that a reasonable person could not justify the sentence because the trial court “failed to discuss any relevant sentencing factors particular to [the defendant’s] life.” *Id.* ¶ 42. Recently, we noted in *Commonwealth v. Kapileo* that “an individualized sentence should not include essential elements of the crime as aggravating factors” or else aggravating factors would automatically be implicated for the commission of the crime itself. 2016 MP 1 ¶ 25 (citing *State v. Fuentes*, 85 A.3d 923, 933 (N.J. 2014)). Further, when a sentence is made pursuant to plea agreements, the trial court must adequately explain its basis on the record “to ensure fair and effective appellate review.” *Fuentes*, 85 A.3d at 926.

¶ 17 Here, we find that Lin’s sentence lacks sufficient individualization because the trial court imposed the maximum sentence based on the crime committed. At the close of the sentencing hearing, the trial court stated “as this case involves sexual abuse in the third degree of 13-year-old female touching of sexual areas, the court imposes the full maximum sentence of five years and without the possibility of parole...” Tr. 19:13–18. We infer from this statement that the sentence was based on the elements of the crime—sexual offense against a minor—rather than on Lin’s individual circumstances. The trial court also noted it reached its sentencing based on “the charges and arguments as well as the videotape, [and] statements from the parties as well as Mr. Lin in particular.” Tr. 19:13–15. But this statement is merely a summary of what transpired at the hearing and not an explanation of why Lin was imposed with the maximum sentence.

¶ 18 Furthermore, the trial court failed to consider the mitigating factors in its sentencing. It merely acknowledged that Lin accepted responsibility for his actions and that his apology was sincere, but did not address how those factors

did or did not influence the sentence.³ Also, the trial court failed to discuss the relevant sentencing factors specific to Lin’s life. In *Fu Zhu Lin*, we stated the court should adjust its sentence to the defendant’s circumstances including, but not limited to, “the need for deterrence or retribution, and the characteristics of the defendant such as . . . criminal history, and the ability to be rehabilitated.” 2014 MP 6 ¶ 48. The record does not reflect that the trial court adequately evaluated or accounted for any of these factors. It merely explained the four sentencing goals. Tr. 19:2–13. Because the sentence was based on the act of the crime rather than on Lin’s individual circumstances, we find that the trial court’s sentencing decision was an abuse of discretion.

C. Compliance with 6 CMC § 4115

¶ 19 Lin contends the trial court failed to comply with 6 CMC § 4115⁴ because it did not state its reasons for sentencing him to the statutory maximum. We review the trial court’s compliance with section 4115 under the abuse of discretion standard. *Fu Zhu Lin*, 2014 MP 6 ¶¶ 9, 50–52 (reviewing the trial court’s imposition of the maximum sentence and compliance of section 4115 for abuse of discretion).

¶ 20 Section 4115 requires the trial court to provide “specific findings supporting the sentence imposed.” *Fu Zhu Lin*, 2014 MP 6 ¶ 50. It must explain on record how mitigating and aggravating factors are weighed in the imposition of its sentence. *Fuentes*, 85 A.3d at 932. Such explanation is necessary and salient for meaningful appellate review of any criminal sentence challenged under this statute. *See Fu Zhu Lin*, 2014 MP 6 ¶ 51. Moreover, the need for specific findings is important because it fosters impartial sentencing decisions by the trial court. *De Gross v. State*, 768 P.2d 134, 138 (Alaska Ct. App. 1989). Here, Lin’s conviction was punishable by a minimum of two to a maximum of five years of imprisonment. Because the Legislature provided a range of punishments, the trial court must individualize its sentence. *Kapileo*, 2016 MP 1 ¶ 21 (citing *Borja*, 2015 MP 8 ¶ 38). Nonetheless, the record reflects that the trial court’s imposition of the maximum sentence of five years was solely based on the act of the crime. Specifically, the trial court did not disclose how the mitigating and aggravating factors were balanced and why a maximum punishment rather than a lesser one would serve the interests of justice. In view of that, we cannot conclude the trial court provided specific findings for imposing the maximum sentence. Accordingly, we find that the trial court’s noncompliance with section 4115 was an abuse of discretion.

³ Lin presented other mitigating factors, including his good character, reaching a civil settlement agreement of \$80,000 to provide restitution to the victim, of which he had paid forty-four percent at the time of sentencing, and the family hardship resulting from his incarceration. The sentencing court did not address how these factors did or did not influence its sentencing.

⁴ 6 CMC § 4115 states, “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.”

D. Parole Eligibility

- ¶21 Lin asserts the trial court mechanically denied his parole eligibility without an explanation. He contends a pattern of similar denials is evidence of the judge's mechanical attitude.
- ¶22 Earlier, we concluded that the trial court did not engage in mechanical sentencing because prior records do not illustrate a reflexive policy of giving predetermined sentences, and it reviewed the mitigating and aggravating circumstances. For that same reason, we conclude that the trial court did not mechanically designate a no parole condition on Lin. But next, we review whether the denial of parole eligibility was an abuse of discretion. *See Commonwealth v. Palacios*, 2014 MP 16 ¶ 12 (“We review the . . . sentencing decision for abuse of discretion.”); 6 CMC § 4252(b)⁵ (stating that the court may deny a defendant's parole eligibility in its entirety, but in doing so, it must exercise discretion).
- ¶23 Again, we reiterate that trial courts have a duty to individualize sentences. *Borja*, 2015 MP 8 ¶ 38. Thus, when a trial court restricts a defendant's parole eligibility greater than the statutory minimum, it must state why the extended restriction is warranted for the defendant. *See Newell v. State*, 771 P.2d 873, 877 (Alaska Ct. App. 1989) (noting the court must specify its reasons when it imposes parole restrictions beyond what the legislature prescribed); *see also Jackson v. State*, 616 P.2d 23, 25 (Alaska 1980) (“The court may then, in its discretion, designate a parole eligibility period greater than the statutory minimum, and should articulate on the record its reasons for doing so.”). The trial court must explain on the record why “the parole eligibility term prescribed by statute would be insufficient to protect the public and insure the defendant's reformation.” *Spencer v. State*, 642 P.2d 1371, 1377 (Alaska Ct. App. 1982).
- ¶24 Here, Lin pled guilty to Third Degree Sexual Abuse of a Minor. Under 6 CMC § 4252(f), a defendant who is convicted of Third Degree Sexual Abuse of a Minor is not eligible for parole until two-thirds of the minimum mandatory sentence has been served, unless the court further limits the eligibility period. The trial court imposed the maximum sentence of five years and completely restricted Lin's parole eligibility for the full term of his sentence. Since the restriction was extended beyond the statutory minimum, the trial court had a duty to explain why the extended restriction was appropriate. Nonetheless, it failed to state its reasons. The record indicates the decision in denying parole eligibility was solely based on the act of the crime.⁶ Such sentencing procedure

⁵ 6 CMC § 4252(b) states, “[A]ny person whose eligibility for parole has been restricted by the sentencing court, in its discretion, shall not be eligible for parole during the period of restriction, which period may be up to the maximum sentence provided under the law.”

⁶ The court denied Lin's parole eligibility “as [the] case involves sexual abuse in the third degree of 13-year-old female. . . .” Tr. 19:13–18.

runs afoul of the policy of individualizing a sentence. *Borja*, 2015 MP 8 ¶ 39. Because the trial court failed to consider the individual factors particular to Lin, we conclude the court's restriction on parole eligibility an abuse of discretion.

V. CONCLUSION

¶ 25 For the foregoing reasons, we VACATE the trial court's sentence and REMAND this matter for resentencing, consistent with this opinion

SO ORDERED this 12th day of September, 2016.

/s/ _____
ALEXANDRO C. CASTRO
Chief Justice

/s/ _____
JOHN A. MANGLONA
Associate Justice

/s/ _____
PERRY B. INOS
Associate Justice