Commonwealth of the Northern Mariana Islands,
Plaintiff/Appellee,
v.
Francisco M. **Cabrera**,
Defendant/Appellant.
Appeal No. 98-007
Criminal Case No. 92-0090
November 29, 1999

Argued and Submitted August 19, 1999

Counsel for Appellant: Douglas F. Cushnie, Saipan.

Counsel for Appellee: Marvin J. Williams, Assistant Attorney General, Saipan.

BEFORE: DEMAPAN, Chief Justice, CASTRO, Associate Justice, MANGLONA, Justice *Pro Tem.*

DEMAPAN, Chief Justice:

¶1 **[1]** Appellant Francisco M. Cabrera ("Cabrera"), for the third time, appeals his conviction and sentence for the offense of delivery of methamphetamine hydrochloride, a crystalline, controlled substance more commonly known as "ice." We have jurisdiction pursuant to Article IV, Section 3 of the Commonwealth Constitution, as amended.[1] We affirm.

ISSUES PRESENTED AND STANDARD OF REVIEW

¶2 Cabrera raises the following seven issues for review, the last six of which are the identical issues and standards of review in *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995).

I. Should the principal of res judicata be applied to this appeal?
II. Whether a statement by Cabrera should not have been admitted into evidence because it was not voluntary.
III. Whether the money introduced as Exhibit 3 and the listing of currency introduced as Exhibit 1 were erroneously admitted into evidence.
IV. Whether the instruction of entrapment as given by the court did not accurately or sufficiently state the law for the jury.

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[1] The Constitution of the Commonwealth of the Northern Mariana Islands, Article IV, Section 3 was amended by the passage of Legislative Initiative 10-3, ratified by the voters on November 1, 1997 and certified by the Board of Elections on December 13, 1997.

V. Whether the trial court erred in denying Defendant's motion for judgment of acquittal.
VI. Whether the court erred in admitting into evidence Exhibit 8.
VII. Whether cumulative error by the trial court mandates reversal of the conviction.

¶3 **[2]** Whether res judicata applies in an action is a legal question subject to *de novo* review on appeal. *In re Estate of Deleon Castro*, 4 N.M.I. 102, 106 (1994).

FACTUAL AND PROCEDURAL BACKGROUND

¶4 Cabrera has previously sought the same relief, on the same issues presented in this matter. *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995). This Court previously entertained and decided all of the issues raised in Cabrera's brief in the 1993 appeal.

¶5 The judgment, from which Cabrera appeals, from is based upon a jury verdict involving all the issues between the parties. The jury found Cabrera guilty under 6 CMC § 2141(a)(1). The Judgment of Conviction was entered on March 26, 1993 and sentencing of Cabrera was completed June 3, 1993. A notice of appeal was filed on June 3, 1993.

¶6 Upon hearing the first appeal, this Court affirmed in part, and remanded, the case for further proceedings regarding sentencing. This Court specifically stated:

> [W]e AFFIRM the judgment of conviction of delivery of methamphetamine hydrochloride entered against Cabrera. We VACATE the sentence imposed to give the trial court an opportunity to clarify its interpretation of the sentencing statute. If its interpretation is in line with our ruling herein, the sentence shall be reinstated. If not, Cabrera, shall be re-sentenced.

Cabrera, 4 N.M.I. at 251. A judgment of conviction from the lower court was entered June 19, 1995.

¶7 The second appeal to this Court, was of the sentence imposed by the Superior Court on remand. This Court affirmed the conviction for delivery of methamphetamine hydrochloride, but remanded the sentencing based on a misinterpretation of 6 CMC § 2141(b)(1). *Commonwealth v. Cabrera*, 1997 MP 1 ¶ 15, 5 N.M.I. 44, 46.

¶8 Subsequently, Cabrera was sentenced to five years imprisonment, all suspended, and placed on supervised probation for a period of five years. *Commonwealth v. Cabrera*, Crim. No. 92-0090 (N.M.I. Super. Ct. Feb. 11, 1998) ([Unpublished] Judgment and Order). Cabrera again appeals.

ANALYSIS

¶9 **[3]** Under the doctrine of res judicata, previous litigation of either a claim or issue may preclude subsequent litigation of the same claim or issue by the same parties or their privies. Subsequent litigation

will be barred where a court of competent jurisdiction has rendered a valid and final judgment on the merits. *Taman v. Marianas Pub. Land Corp.*, 4 N.M.I. 287 (1995).

¶10 **[4]** The Commonwealth asserts the doctrine of res judicata bars Cabrera from litigating again the merits of his case. Res judicata requires that where a court has entered a final judgment on the merits, the judgment is binding on the parties or their privies as to any matter which was or might have been litigated in the case giving rise to final judgment. *Comm'r of Internal Revenue v. Sunnen*, 333 U.S. 591, 597, 68 S. Ct. 715, 719, 92 L. Ed. 898, 905 (1948). The judgment, if rendered upon the merits, constitutes an absolute bar to a subsequent action. *Cromwell v. County of Sac*, 94 U.S. 351, 352, 24 L. Ed 195, 197 (1876).

¶11 **[5]** Although we have yet to apply this doctrine in the criminal context, it is well recognized by federal jurisdictions and other states that "[t]he doctrines of *res judicata* and collateral estoppel apply to criminal, as well as civil, proceedings." *United States v. Cejas,* 817 F.2d 595, 598 (9th Cir. 1987). The United States Supreme Court has recognized the application of this doctrine in criminal as well as civil cases.[2] *United States v. Oppenheimer*, 242 U.S. 85, 37 S. Ct. 68, 61 L. Ed. 161(1961); *Ashe v. Swenson*, 397 U.S. 436, 443, 90 S. Ct. 1189, 1194, 25 L. Ed. 2d 469, 475 (1970); *Collins v. Loisel*, 262 U.S. 426, 43 S. Ct. 618, 67 L. Ed. 1062 (1923).

¶12 However, in this appeal, we will emphasize it is the Commonwealth, not the Defendant who is arguing res judicata. It is not disputed that the parties are the same and that this Court had the authority to adjudicate the first and second appeals. There is no dispute that the claims raised are the same. Cabrera has appealed all aspects of his conviction.

¶13 **[6]** Cabrera's remaining argument is that there is no final judgment. For res judicata to apply, there must be a valid final judgment. *In re Estate of De Leon Castro*, 4 N.M.I. 102, 111 (1994). It is "familiar law that only a final judgment is *res judicata*." *G. & C. Merriam Co. v. Saalfied*, 241 U.S. 22, 28, 36 S. Ct. 477, 480, 60 L. Ed. 868, 872 (1916). "[T]hat the parties were fully heard, that the court supported its decision with a reasoned opinion, that the decision was subject to appeal or was in fact reviewed on

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[2] Application of res judicata in civil and criminal cases appears to vary in at least one significant way. In the criminal context, the bar of res judicata is closely related to the bar of double jeopardy. Res judicata may dispose of a case with finality without the attachment of jeopardy. *United States v. Oppenheimer*, 242 U.S. 85, 37 S. Ct. 68, 61 L. Ed. 161 (1916).

appeal," are factors supporting the conclusion that the decision is final for the purposes of preclusion. *Borg-Warner Corp. v. Avco Corp.*, 850 P.2d 628, 634 (Alaska 1993). For a decision to be final, it "must ordinarily be a firm and stable one, the 'last word' of the rendering court." *Taman v. Marianas Pub. Land Corp.,* 4 N.M.I. 287, 292 (1995).

¶14 **[7]** In applying res judicata to this case, all the elements are met. Cabrera has added no new facts, parties or claims. Here, the valid final judgment regarding issues II through VII was issued in *Commonwealth v. Cabrera*, 4 N.M.I. 240 (1995). Only the sentencing portion of the lower court's order had previously been vacated twice, not the actual conviction, which was upheld. Cabrera is not appealing the sentence by the lower court entered on February 11, 1998, but the merits of the conviction. This he cannot do because that final, valid judgment of conviction has already been upheld on appeal.

¶15 **[8]** "[R]es judicata and collateral estoppel relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication." *Allen v. McCurry*, 449 U.S. 90, 94, 101 S. Ct. 411, 415, 66 L. Ed. 2d 308, 313 (1980). There has to be an end to litigation between parties. Individuals are entitled to their day in court, but they are not entitled to have several tries in court on their claim. *Sablan v. Iginoef*, 1 N.M.I. 190 (1990), *appeal dismissed sub nom., Sablan v. Manglona*, 938 F.2d 970 (9th Cir. 1991).

¶16 **[9]** The issues are the same, the parties are the same and the requests being made by Cabrera are the same. Since these issues were already heard and decided by this Court, Cabrera cannot seek to raise them a second time. Cabrera does not present any new issues or arguments. Thus, the prior decision should remain undisturbed. *See Matchett v. Rose*, 344 N.E.2d 770, 779 (Ill. App. Ct. 1976).

CONCLUSION

¶17 For the foregoing reasons, the appeal is hereby **DENIED**.