

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.

**SIMON SEBUU,**  
Defendant-Appellee.

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**SUPREME COURT NO. 2008-SCC-0005-CRM**  
**SUPERIOR COURT NO. 07-0109-CR**

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**Cite as: 2011 MP 15**

Decided December 20, 2011

Adam Miles, Assistant Public Defender, Office of the Public Defender, Saipan, MP, for Plaintiff-Appellant.

Tiberius D. Mocanu, Assistant Attorney General, Office of the Attorney General, Saipan, MP, for Defendant-Appellee.

BEFORE: ALEXANDRO C. CASTRO, Acting Chief Justice; JOHN. A. MANGLONA, Associate Justice; EDWARD MANIBUSAN, Justice Pro Tem.

MANGLONA, J.:

¶ 1 Defendant Simon Sebuu (“Sebuu”) appeals his bench conviction for criminal mischief in violation of 6 CMC § 1803(a)(1). Sebuu contends that he should be granted a new trial on the charge of criminal mischief because he was improperly denied a trial by jury and, additionally, because the trial court failed to render in writing specific findings of fact after he requested them. For the reasons set forth in this opinion, we affirm the judgment.<sup>1</sup>

## I

¶ 2 The Commonwealth charged Sebuu by information with one count each of: (1) burglary, pursuant to 6 CMC § 1801(a); (2) theft, pursuant to 6 CMC § 1601(a); and (3) criminal mischief, pursuant to 6 CMC § 1803(a)(1). After the jury was sworn, the Commonwealth petitioned the trial court for permission to make an oral amendment to the First Amended Information. The Commonwealth informed the court that it lacked evidence to prove the felony criminal mischief count and that it would reduce the criminal mischief charge to a misdemeanor. The First Amended Information charged Sebuu with felony criminal mischief pursuant to 6 CMC § 1601(b)(2), which requires proof that a defendant caused “at least \$250 but less than \$20,000” in damage. The Commonwealth sought to reduce the criminal mischief charge to 6 CMC § 1601(b)(3), which requires proof that the amount of damage caused is less than \$250. The trial court heard argument from both sides, determined that the amendment would not be prejudicial to Sebuu or his co-defendant, and permitted the Commonwealth to make the oral amendment. At the close of trial, the jury acquitted Sebuu of burglary, but the trial court convicted him of misdemeanor theft and misdemeanor criminal mischief. The trial court sentenced him to serve one year for theft and one year for criminal mischief, sentences to be served consecutively, with six months suspended.

¶ 3 After the trial court pronounced Sebuu guilty of theft and criminal mischief, it made oral findings of fact. Sebuu then requested that the trial court issue written findings of fact. At the sentencing hearing six weeks later, he again requested written findings of fact. The trial court stated that its oral findings were sufficient and no written statement would be forthcoming. Sebuu filed a timely notice of appeal.

## II

¶ 4 We have jurisdiction over this appeal pursuant to 1 CMC § 3102(a).

## III

¶ 5 Sebuu’s primary argument on appeal is that he was entitled to a jury trial for criminal mischief because it was charged as a felony in the First Amended Information and he did not waive his right to a jury trial. This contention is not in accord with the facts. The record shows that the trial court permitted

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<sup>1</sup> The Commonwealth was not permitted to file a brief in this matter after failing to adhere to deadlines. *Commonwealth v. Sebuu*, No. 2008-SCC-0005-CRM (NMI Sup. Ct. June 24, 2011) (Order Denying Motion for Extension of Time to File Response Brief; Order to Show Cause).

the Commonwealth to orally amend the First Amended Information on the day of trial, over Sebuu's objection.<sup>2</sup> The right to a jury trial attaches when the defendant is "accused by information of committing a felony punishable by more than five years imprisonment or by more than \$2,000 fine." 7 CMC § 3101. The amended information reduced the criminal mischief charge to a misdemeanor. Thus, Sebuu did not have a right to a jury trial because the orally amended information did not charge him with a felony.<sup>3</sup>

¶ 6 Sebuu also argues that the trial court erred because, although his counsel requested written findings of fact and conclusions of law, the trial court entered oral findings only. Appellant's Br. at 10. This argument implicates NMI Rule of Criminal Procedure 23(c) ("Rule 23(c)"), which governs the trial court's duty to enter findings of fact and conclusions of law in a case tried without a jury. The issue of whether Sebuu was entitled to written findings pursuant to Rule 23(c) is an issue of law that we review de novo. *See State v. Ricky G.*, 760 A.2d 1065, 1068 (Me. 2000) (reviewing de novo the issue of whether findings of fact entered by trial court after remand were sufficient to satisfy Federal Rule of Criminal Procedure 23(c)).<sup>4</sup>

¶ 7 Rule 23(c) provides:

In a case tried without a jury the court shall make a general finding and shall in addition, on request made *before* the general finding, find the facts specially. *Such findings may be oral.* If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

NMI R. Crim. P. 23(c) (emphasis added). The "general finding" refers to the trial court's determination of the defendant's guilt or innocence. Thus, pursuant to the plain language of Rule 23(c), the trial court is only required to enter specific findings if the defendant requests those findings before the trial court finds the defendant guilty or not guilty. *See United States v. Igbinosun*, 528 F.3d 387, 392 (5th Cir. 2008) (interpreting Fed. R. Crim. P. 23(c) and stating that the rule "only requires that specific findings of fact be rendered if a party requests it before the finding of guilty or not guilty."); *United States v. Lockhart*, 382

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<sup>2</sup> The Supreme Court Rules place the burden of assembling a proper record on the appellant. NMI Sup Ct. R. 11(a). We were not provided a written transcript of the entire proceedings below, and we therefore found it necessary to review the entire audio transcript in reaching our decision. *See* NMI Sup. Ct. R. 2 (allowing the Court to suspend any provision of the rules to expedite its decision or for other good cause.)

<sup>3</sup> The relevant inquiry, under NMI Rule of Criminal Procedure 7(e), is whether the prosecutor's oral amendment prejudiced Sebuu's "substantial rights." Rule 7(e) provides in relevant part: "[t]he court may permit an information to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced." NMI R. Crim. P. 7(e). The propriety of the oral amendment to the information is not before us. *See Commonwealth v. Castro*, 2008 MP 18 ¶ 24-26 (concluding a criminal appellant waived his double jeopardy argument by failing to preserve it for appeal during trial and again failing to argue the issue in his opening brief).

<sup>4</sup> "[W]hen our rules are patterned after the federal rules it is appropriate to look to federal interpretation for guidance." *Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 60 (citing *Ishimatsu v. Royal Crown Ins. Corp.*, 2006 MP 9 ¶ 7 n.3)).

F.3d 447, 451 n.2 (4th Cir. 2004) (interpreting Fed. R. Crim. P. 23(c) and stating, “under Fed. R. Crim. P. 23(c), the district court is not required to make specific findings of fact unless requested by a party before a finding of guilt is pronounced.”).

¶ 8 Here, Sebuu requested the trial court issue written findings of fact and conclusions of law after the trial court pronounced him guilty of criminal mischief. He failed to make the request before the trial court’s general finding of guilt, as required by the plain language of Rule 23(c). Moreover, even if Sebuu’s request for written findings would have been timely, we would not have found error because Rule 23(c) explicitly permits the trial court to enter its findings orally. NMI R. Crim. P. 23(c) (“Such findings may be oral.”).<sup>5</sup>

#### IV

¶ 9 For the reasons stated herein, the judgment of the trial court is AFFIRMED.

SO ORDERED this 20th day of December, 2011.

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/s/  
ALEXANDRO C. CASTRO  
Acting Chief Justice

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/s/  
JOHN A. MANGLONA  
Associate Justice

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/s/  
EDWARD MANIBUSAN  
Justice Pro Tem

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<sup>5</sup> Sebuu also argued that his conviction should be reversed because of cumulative error. Cumulative error, by definition, requires two or more individually harmless errors that prejudiced the defendant to the same extent as a single reversible error. *United States v. Rivera*, 900 F.2d 1462, 1469 (10th Cir. 1990). *See also United States v. Wallace*, 848 F.2d 1464, 1475 (9th Cir. 1988); *United States v. Canales*, 744 F.2d 413, 430 (5th Cir. 1984). Here, the lack of any error precludes cumulative error analysis.