

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

FRANCISCO Q. GUERRERO,
Defendant-Appellant.

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

ORDER DENYING MOTION TO RECONSIDER

Cite as: 2014 MP 2

Decided February 18, 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 In *Commonwealth v. Guerrero*, 2013 MP 16, we denied Defendant-Appellant Francisco Q. Guerrero’s (“Guerrero”) motion for a stay of sentence pending resolution of his appeal. Pursuant to NMI Supreme Court Rule 27-2(d), Guerrero filed a motion to reconsider that decision. Guerrero claims: (1) the Commonwealth’s failure to turn over attorney notes from attorney-witness interviews violated the *Brady* rule; (2) the trial court’s allowance of Julian Camacho, a Division of Youth Services Officer, to testify as an expert so tainted the trial that it was constitutionally deficient; and (3) the Supreme Court overstepped its authority by remanding for further proceedings to determine whether a disputed Attorney General Investigative Unit (“AGIU”) Report existed and, if so, whether it contained *Brady* material. For the following reasons, we DENY Guerrero’s motion to reconsider.

I. Standard of Review

¶ 2 This motion raises an issue of first impression: the standard for reconsidering a three-justice panel’s order resolving a motion. When a party requests a three-justice panel to reconsider a single justice’s order resolving a motion, we review de novo. *See generally Owens v. Commonwealth Health Ctr.*, 2011 MP 6 (reviewing de novo a single justice’s order denying a request for leave to file an out-of-time brief). Meanwhile, we have reviewed orders in cases transferred to us from our predecessor court, the Appellate Division of the District Court for the Northern Mariana Islands, for an “intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.” *Camacho v. J. C. Tenorio Enterprises*, 2 NMI 407, 413-14 (1992) (quoting 18 CHARLES ALAN WRIGHT, ARTHUR R. MILLER, & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE: JURISDICTION § 4478 (1981)). Commonwealth trial courts likewise review analogous 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. Eguia*, 2008 MP 17 ¶ 7 (internal citation omitted) (stating the standard applies to both civil and criminal cases). We find this approach proper and, therefore, will reconsider orders decided by three justices using the standard set forth in *Camacho* and *Eguia*.

II. Facts and Procedural History

¶ 3 Before trial, the Commonwealth provided Guerrero some, but not all, notes made by Commonwealth attorneys during interviews with the victim. Guerrero unsuccessfully sought production of the unproduced notes. He also sought production of the AGIU Report regarding his sexual-abuse charge. At trial, the trial court permitted the expert testimony of Camacho, who the government later

conceded was not an expert in a subsequent, unrelated case. After trial, the trial court found Guerrero guilty of eleven bench counts for sexual abuse of a minor and sentenced him to six years in prison.

¶ 4 Guerrero then filed an emergency motion with the Supreme Court seeking a stay of sentence. Guerrero's motion claimed the Commonwealth's failures to turn over the attorney notes and AGIU Report as well as the trial court's allowance of Camacho to testify as an expert warranted a stay. We denied that motion, but remanded for further proceedings to determine if an AGIU Report regarding Guerrero's sexual-abuse charge exists and, if so, whether it contained *Brady* material different from discovery the Commonwealth already provided Guerrero.

¶ 5 Guerrero filed a motion to reconsider that order.

III. Analysis

¶ 6 Guerrero argues we should reconsider the order denying a stay of his sentence because of three errors: (1) the Commonwealth violated the *Brady* rule by not turning over attorney notes from interviews with the victim; (2) the trial court's allowance of Camacho to testify as an expert violated Guerrero's constitutional right to a fair trial; and (3) we overstepped our authority by remanding the AGIU-Report issue for further proceedings. We will address each in turn.

A. Failure to Turn Over Attorney Notes During Discovery

¶ 7 Guerrero first argues the Commonwealth's failure to turn over attorney notes made during attorney-witness interviews, including victim statements contained in those notes, violated the *Brady* rule. This rule requires prosecutors to disclose materially exculpatory evidence in the government's possession to the defense. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). But Guerrero overlooks NMI Rule of Criminal Procedure 16, which governs the Commonwealth's duty to disclose evidence. NMI Rule of Criminal Procedure 16(a)(2) exempts "internal government documents made by [an] attorney for the government . . . in connection with the investigation or prosecution of the case." *Id.* The requested attorney notes fall within the exemption because the attorneys interviewed the victim as part of investigating and prosecuting the case. Therefore, we find no clear error or manifest injustice.

B. Allowing Camacho to Testify as an Expert

¶ 8 Guerrero next re-litigates his claim that the trial court's allowance of Julian Camacho to testify as an expert so tainted the trial that it was constitutionally deficient. He argues our order should not have relied on the trial court's findings, which stated that the trial court found Camacho guilty on the strength of the victim's testimony rather than Camacho's expert testimony. Instead, Guerrero suggests we should find the expert testimony was a constitutional error because it violated Guerrero's right to a fair trial. We are not convinced.

¶ 9 Defendants are not guaranteed a perfect trial, just a fair one. *Commonwealth v. Jing Xin Xiao*, 2013 MP 12 ¶ 83. Consequently, only certain errors require reversal or a new trial. To determine whether

an error is harmless, we review “whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” *Commonwealth v. Hossain*, 2010 MP 21 ¶ 18 (quoting *Commonwealth v. Demapan*, 2008 MP 16 ¶ 45).

¶ 10 Guerrero has not shown Camacho’s testimony meets that test. His argument boils down to this: We should not rely on the trial court’s judgment that the victim’s testimony standing on its own was sufficient to find Guerrero guilty of sexual abuse. Guerrero asks for something we cannot do. We generally defer to a trial court’s factual findings, including the credibility of witnesses. 1 CMC § 3103. We may set aside that deference only if the finding of fact was clearly erroneous. *Id.* A finding of fact is clearly erroneous only if after “reviewing all the evidence . . . [we are] left with a definite and firm conviction that a mistake was made.” *Pangelinan v. Itaman*, 4 NMI 114, 120 n.33 (1994). In reviewing the evidence, we must give “due regard . . . to the opportunity of the trier of fact to judge the credibility of witnesses.” 1 CMC § 3103.

¶ 11 Here, the trial court was the trier of fact. It sat through trial, watching and listening as the witnesses testified. Based on that experience, the trial court stated in its order denying a stay of sentencing that it found Guerrero guilty solely based on the victim’s testimony. That is, the trial court did not rely on Camacho’s testimony in finding Guerrero guilty.

¶ 12 Because Guerrero’s appeal is in its early stages, we cannot have a firm and definite conviction that the trial court erred in finding the victim’s testimony credible enough to warrant a guilty verdict. We cannot because we do not even have a transcript. Without the transcript, we cannot review either the victim or the expert’s testimony. And, without that review, we simply do not have enough evidence to disturb the trial court’s credibility determination. To disturb that determination entirely because of a party’s brief would violate 1 CMC § 3103’s directive to give “due regard” to the fact-finder’s credibility determinations. Consequently, because of the incomplete record, 1 CMC § 3103’s directive, and the trial court’s finding that the victim’s testimony was both credible and sufficient to find Guerrero guilty, we find no clear error or manifest injustice.

C. Supreme Court’s Remand Authority

¶ 13 Finally, Guerrero contends that the Supreme Court overstepped its authority by remanding for further proceedings whether a disputed AGIU Report existed and, if so, whether it contained *Brady* material. He claims NMI Rule of Criminal Procedure 33 does not permit us to remand a portion of an emergency motion to the trial court for further proceedings. Instead, our only recourse was to grant Guerrero’s stay. We disagree.

¶ 14 We may remand emergency motions for further proceedings. NMI Supreme Court Rule 27-1, which governs emergency motions, implicitly addresses this scenario. It requires parties to explain why their “motion should not be remanded . . .” *Id.* 27-1(a)(4). Similarly, NMI Rule of Criminal Procedure

33 contemplates the trial court’s jurisdiction and authority on remand: “if an appeal is pending, the [trial] court may grant [a new trial] only on remand” On remand, the trial court’s authority over a bench trial includes “vacat[ing] the judgment if entered, tak[ing] additional testimony,” and ordering a new trial in light of “newly discovered evidence.” NMI R. CRIM. P. 33. Taken together, these rules provide the Supreme Court the authority to remand emergency motions and the trial court the authority to conduct additional fact-finding consistent with the remand. Therefore, we once again find no clear error or manifest injustice.

IV. Conclusion

¶ 15 For the reasons stated above, Guerrero’s motion to reconsider is DENIED.

SO ORDERED this 18th day of February, 2014.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
TIMOTHY H. BELLAS
Justice Pro Tem