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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellant,

v.

RITA SABLAN,
Defendant-Appellee.

Supreme Court No. 2016-SCC-0018-TRF

Superior Court No. 15-00305

ORDER DISMISSING APPEAL

Cite as: 2016 MP 12

Decided October 21, 2016

Matthew C. Baisley, Assistant Attorney General, Office of the Attorney General, Saipan, MP, for Plaintiff-Appellant.

Brien Sers Nicholas, Saipan, MP, for Defendant-Appellee.

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

CASTRO, CJ:

¶ 1 The Commonwealth of the Northern Mariana Islands ("Commonwealth") appealed a judgment of acquittal of Defendant-Appellee Rita Sablan ("Sablan"). Subsequently, Sablan filed a motion seeking dismissal of the appeal and sanctions against the Commonwealth. Sablan argues the appeal is frivolous because as a matter of law a judgment of acquittal is not appealable. In response, the Commonwealth moves for a voluntary dismissal and opposes Sablan's motion for sanctions. For the reasons stated below, we DISMISS the appeal, and SANCTION the Commonwealth.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 The Commonwealth charged Sablan with operating a government vehicle with tinting and without the requisite government license plates and markings, in violation of 1 CMC §§ 7406(e),[1] (f),[2] and (g)(2).[3] Sablan moved to dismiss the charges arguing 1 CMC § 7406(a)(2), which defines "government vehicle," was unconstitutionally vague as applied since it did not give adequate notice as to what constituted a government vehicle.[4] The trial court denied the motion concluding Section 7406(a)(2) was not impermissibly vague. The court found the term "government vehicle" was defined in Section 7406(a)(2) as "a vehicle owned or leased" by the government. The court then turned to 9 CMC § 1103(e) of the Vehicle Code to define "owner" as having possession or use of vehicle under a lease for a period of twelve months or more.[5] The court

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[1] 1 CMC § 7406(e) states in relevant part: "No person shall operate or use a government vehicle that has any tinting materials on its windows."

[2] 1 CMC § 7406(f) states in relevant part: "All government vehicles or government leased vehicles, excepting only unmarked law enforcement vehicles and cars driven by elected officials or judges, shall be clearly marked as such on both front doors . . . ."

[3] 1 CMC § 7406(g)(2) states in relevant part: "[A]ny person driving, operating or using a vehicle that is a government vehicle that does not bear government license plates shall be guilty of an infraction punishable by a fine of up to $500, and/or three days imprisonment."

[4] 1 CMC § 7406(a)(2) defines government vehicle as "a vehicle owned or leased by the Commonwealth government or any of its branches or political subdivisions, including autonomous agencies, government corporations, boards, and commissions."

[5] 9 CMC § 1103(e) defines "owner" as follows:

> [A] person having all the incidents of ownership including the legal title of a vehicle whether or not such person lends, rents or pledges the vehicle; the person entitled to the possession of a vehicle as the purchaser under a conditional sales contract; the mortgagor of a

concluded that under these definitions, a government vehicle was one that the Commonwealth owned or leased for a period of at least twelve months. Following a bench trial, the court acquitted Sablan, concluding the vehicle she operated was not a "government vehicle" as defined in 9 CMC § 1103(e) because it was leased for fifteen days, not the statutorily required twelve months.

¶ 3 The Commonwealth appealed the trial court's judgment of acquittal. Before the Commonwealth filed its docketing statement, Sablan moved to dismiss the appeal and sought sanctions including double costs and reasonable attorney fees, arguing the appeal was frivolous. The Commonwealth then moved for a voluntary dismissal of the appeal and opposed Sablan's motion for sanctions. We now consider whether the appeal may be dismissed and whether sanctions should be granted.

II. JURISDICTION

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

III. DISCUSSION

¶ 5 Sablan argues the appeal is frivolous because the Commonwealth has no right to appeal a judgment of acquittal. She asserts 6 CMC § 8101 prohibits appealing a "finding of not guilty." Additionally, Sablan contends the prohibition against double jeopardy bars appealing a judgment of acquittal.

¶ 6 According to the Commonwealth, the appeal is not frivolous because 6 CMC § 8101 allows the government to appeal on a point of law without seeking reversal of an acquittal. It argues under 6 CMC § 8101(a)[6] the government has a right to lodge an appeal when a statute is held invalid. It avers the trial court invalidated 1 CMC § 7406(a)(2) by applying a narrower definition of vehicle ownership from 9 CMC § 1103(e) of the Vehicle Code, rather than applying the definition of "leased" from 1 CMC § 7406(a)(2) when interpreting "government vehicle." Thus, the Commonwealth asserts, the judgment of acquittal was appealable to challenge that ruling. Additionally, it contends the appeal involves a jurisdictional question that has not been decided by this Court, and it should not be sanctioned for examining matters of first impression.

¶ 7 An appeal may be deemed frivolous if a court lacks jurisdiction. *See Beachboard v. United States*, 727 F.2d 1092, 1094–95 (Fed. Cir. 1984) (dismissing appeal as frivolous for want of jurisdiction). Even if we have jurisdiction, an appeal is frivolous if "no justiciable question has been presented

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> vehicle; the government, when entitled to the possession and use of a vehicle under a lease, lease-sale, or rental-purchase agreement for a period of 12 months or more.

[6] 6 CMC § 8101(a) states "In a criminal case, the Commonwealth government shall have the right to appeal only when a written enactment intended to have the force and effect of law has been held invalid."

and [it] is readily recognizable as devoid of merit in that there is little prospect that it can ever succeed." *Commonwealth v. Kawai*, 1 NMI 66, 72 n.4 (1990) (citing Black's Law Dictionary 601 (5th ed. 1979)). Accordingly, we first determine whether we have jurisdiction to review a judgment of acquittal. Then we assess whether under 6 CMC § 8101(a) the government has a right to appeal a trial court's ruling invalidating a statute from a judgment of acquittal and whether the trial court invalidated 1 CMC § 7406(a)(2), giving the Commonwealth the right to appeal in the instant case.

A. Jurisdiction

¶ 8 The Commonwealth asserts the issue on appeal involves a unique jurisdictional question we have yet to address. However, the Commonwealth frames the appellate issue as one concerning a government's right to appeal. It states: "[W]here a trial court invalidates a statute in connection with entering a judgment of acquittal, may the Commonwealth appeal the legal ruling invalidating the statute under 6 CMC § 8101(a) even though it may not appeal the acquittal itself." Presumably, the Commonwealth framed the issue based on a belief that 6 CMC § 8101(a) may limit the jurisdiction of this Court. However, this logic is flawed. In *Commonwealth v. Borja*, we held that statutes cannot restrict our jurisdiction because we were "established by the Constitution and not the Legislature, [and therefore,] the Legislature is without the constitutional authority to limit this Court's jurisdiction." 2015 MP 8 ¶ 18.

¶ 9 The proper jurisdictional inquiry is whether we have jurisdiction to review a judgment of acquittal. The answer is yes. Our appellate jurisdiction is vested by Article IV, Section 1 of the NMI Constitution, and under the Constitution, we have the power to "hear appeals from final judgments and orders of the Commonwealth superior court." NMI CONST. art. IV, § 3. A judgment of acquittal is unquestionably a final judgment, *see Bullington v. Mo.*, 451 U.S. 430, 445 (1981) ("A verdict of acquittal on the issue of guilt or innocence is, of course, absolutely final."), and hence, we have jurisdiction to review the trial court's judgment here.[7]

B. Right to Appeal

¶ 10 Because we have jurisdiction, we next assess whether under 6 CMC § 8101(a) the government has a right to appeal a trial court's ruling invalidating a statute from a judgment of acquittal. "A basic principle of construction is that language must be given its plain meaning." *Tudela v. Marianas Pub. Land Corp.*, 1 NMI 179, 185 (1990). Statutory interpretation must be "guided not by 'a single sentence or member of a sentence, but looking to the provisions of the

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[7] The Commonwealth's argument ultimately fails because the express language of 6 CMC § 8101(a) does not directly bear on the issue of jurisdiction. The statute reads: "In a criminal case, the *Commonwealth government shall have the right to appeal* only when a written enactment intended to have the force and effect of law has been held invalid." (emphasis added). The language of the statute, as expressed in its plain meaning, addresses the government's right to appeal but does not explicitly limit our jurisdiction.

whole law, and to its object and policy.'" *John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank*, 510 U.S. 86, 94–95 (1993) (quoting *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 51 (1987)). Thus, we turn to the interpretation of the whole law.

¶ 11 The government's right to appeal are enumerated in 6 CMC §§ 8101(a)–(c). Section 8101(a) states: "In a criminal case, the Commonwealth government shall have the right to appeal only when a written enactment intended to have the force and effect of law has been held invalid." Section 8101(b), in relevant part, states: "In a criminal case an appeal by the Commonwealth government shall lie to the Supreme Court from a decision, judgment or order of the Superior Court dismissing an information or granting a new trial after verdict or judgment . . . except that no appeal shall lie where the double jeopardy clause [attaches]." Section 8101(c) states: "If the Commonwealth government has appealed in a criminal case, the Supreme Court may not reverse any finding of not guilty." Here, Section (a) expressly allows the government to appeal a trial court's judgment if a statute has been held invalid. Section (b) permits the government to appeal a final judgment unless double jeopardy attaches. Section (c) expressly prohibits this Court from reversing a finding of not guilty if the criminal appeal involves such a finding. Upon considering the statute in its entirety, we conclude 6 CMC § 8101(a) permits the Commonwealth to appeal a trial court's ruling invalidating a statute from a judgment of acquittal without attacking the acquittal.[8] The statute ostensibly reflects an implicit legislative will to balance the competing interests between the prohibition on double jeopardy and the right of the government to appeal invalidated statutes. Further, appellate review of a trial court's ruling may be necessary to establish proper precedents for the correct administration of the law in the future. *See State v. Ruff*, 847 P.2d 1258, 1263 (Kan. 1993) (noting the appellate review of a legal ruling is important for the proper administration of the criminal law). Given these points, we conclude that under 6 CMC § 8101(a), the Commonwealth may request a bifurcated appellate review on a point of law from a judgment of acquittal but may not appeal an acquittal on the merits.

C. Invalidation of 1 CMC § 7406(a)(2)

¶ 12 Lastly, we examine whether the trial court invalidated 1 CMC § 7406(a)(2), giving the Commonwealth the right to appeal. The Commonwealth argues the trial court invalidated the term "or leased" in Section 7406(a)(2) as applied by "requiring ownership in all cases, either actual ownership, or

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[8] Notwithstanding this right, we note the United States Supreme Court clearly held the prohibition of double jeopardy bars the government from challenging "an acquittal on the merits . . . even if [the trial court's judgment is] based on legal error." *Arizona v. Rumsey*, 467 U.S. 203, 211 (1984). Once the trial court finds a defendant not guilty, that decision is final and cannot be attacked. *Id.* The statute in question poses no threat to a defendant's right against double jeopardy because it allows the government to appeal seeking review of a statute that has been held invalid and not the acquittal itself.

constructive ownership accomplished by entering into a lease agreement of sufficient duration." We find no merit to the Commonwealth's argument.

¶ 13 Invalidation of a statute means to hold the statute "*not of binding force or legal efficacy*." *Commonwealth v. Nethon*, 1 NMI 458, 462 (1990) (alteration in the original) (citing Black's Law Dictionary 739 (5th ed. 1979)). To invalidate a statute as applied, a court must rule that the application of the statute would be unconstitutional in a particular context in which a person has acted. *E.g.*, *Ada v. Guam Soc'y of Obstetricians & Gynecologists*, 506 U.S. 1011, 1011 (1992) (Scalia, J., dissenting from a denial of certiorari); *Texas Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504, 518 n.16 (Tex. 1995). The trial court did not hold Section 7406(a)(2) unconstitutional when applied to Sablan's situation.[9] The court merely engaged in a statutory interpretation to determine whether Sablan's conduct violated 1 CMC §§ 7406(e), (f) and (g)(2). In so doing, the court evaluated whether the vehicle in question was "owned or leased" by the government by construing "owned or leased" pursuant to 9 CMC § 1103(e) of the Vehicle Code.[10] Because the court did not invalidate Section 7406(2), but merely clarified the term of art "owned or leased," the Commonwealth had no right to appeal the judgment under 6 CMC § 8101(a). Accordingly, we find the appeal frivolous as it had no prospect of succeeding on the merits.[11]

D. Rule 38 Sanction

¶ 14 Sablan requests we impose sanctions under NMI Supreme Court Rule 38 because the appeal is frivolous. Under Rule 38, we may award just damages including attorney fees and single or double costs to an appellee if we find an appeal frivolous. In determining whether damages are warranted under the rule, we held in *Pac. Amusement, Inc. v. Villanueva III* that "there [must be] absolutely no legal or factual basis upon which appellant relied," and a finding of bad faith must be present. 2006 MP 8 ¶ 20. However, prior to *Pac. Amusement*, a showing of bad faith was not required, and we freely sanctioned parties under Rule 38 for merely lodging frivolous appeals. *E.g.*, *Commonwealth v. Kawai*, 1 NMI 66, 73 (1990); *Cabrera v. Ahn Yeoung Mi*, 1997 MP 19 ¶ 22; *Guo Qiong He v. Commonwealth*, 2003 MP 3 ¶ 25. In *Pac. Amusement*, we required that bad faith must be present based on a misreading of *Rosario v. Quan*, 3 NMI 269 (1992). In *Rosario*, the appellant sought sanctions against the defendant in the form of attorney fees, arguing we had the

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[9] The trial court specifically held in its order denying Sablan's motion to dismiss that 1 CMC § 7406(a)(2) was not unconstitutional as applied because the term "government vehicle" was clearly defined in 9 CMC § 1103(e).

[10] We do not decide whether the court did or did not accurately interpret 1 CMC § 7406(a)(2).

[11] Our decision does not foreclose the government's right to appeal a criminal case where a statute has been held invalid. In the future, the Commonwealth is recommended to state in its notice of appeal that it is seeking a bifurcated appellate review on a point of law from a judgment of acquittal.

inherent authority to impose sanctions on a party who acts in bad faith or who files frivolous claims or defenses. We denied sanctions because the appellant failed to support her assertions. *Id.* at 282. *Rosario* did not stand for the proposition that bad faith is required under Rule 38. It merely advanced that we have the inherent authority to impose sanctions upon a showing of bad faith or frivolous claim. Accordingly, we now overturn *Pac. Amusement* to the extent that it held Rule 38 requires a finding of bad faith.

¶ 15 We must also note that sanctions in *Rosario* are distinguishable from those sought in *Pac. Amusement* and this appeal. The appellant in *Rosario* sought sanctions under the inherent authority of the Court while the appellant in *Pac. Amusement*, as in the instant case, sought sanctions under Rule 38. We take this opportunity to clarify the difference.

¶ 16 An award of damages under Rule 38 is remedial in nature, not punitive. *Beam v. Bauer*, 383 F.3d 106, 108 (3d Cir. 2004).[12] "It does not matter whether [the appellant] filed [the] appeal out of malice, ignorance, or deceit; it is the merit of [the] argument on appeal that determines whether [the appellant] carries the day." *Id.* The purpose of Rule 38 is to make whole a party who has incurred needless costs defending a frivolous appeal. *Id.* at 108–09. Ergo, a showing of bad faith is not necessary. *See United States v. Nelson (In re Becraft)*, 885 F.2d 547, 549 (9th Cir. 1989) (stating a finding of bad faith is not necessary to impose sanction under Rule 38).[13]

¶ 17 On the other hand, an award of damages under the Court's inherent authority can be remedial or punitive in nature, or both. *See Rosario v. Quan*, 3 NMI 269, 282 (1992) (examining appellant's request to award damages based on frivolous appeal or bad faith). If the appeal is frivolous, we have the inherent power to impose sanctions to make the injured party whole; if the appeal is made in bad faith, we can impose punitive sanctions. *Id.* This inherent authority exists absent a specific statute authorizing the imposition of such fine. *See Tenorio v. Superior Court*, 1 NMI 112, 127 (1990) ("[W]e . . . have the inherent authority to impose sanctions that are not specifically addressed by rule.").

¶ 18 Here, we are not persuaded Rule 38 sanction is appropriate. The Commonwealth's appeal was to challenge the trial court's ruling on a question

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[12] The NMI Supreme Court Rule 38 is substantially identical to Federal Rule of Appellate Procedure 38. *Compare* FED. R. APP. P. 38 ("If a court of appeals determines that an appeal is frivolous, it may . . . award just damages and single or double costs to the appellee.") *with* NMI SUP. CT. R. 38. We look to federal interpretation for guidance when our local rule is similar. *See Commonwealth v. Palacios*, 2003 MP 6 ¶ 9 (stating it is proper to consider the interpretation of the counterpart federal rule when the Commonwealth rule is substantially similar).

[13] A majority of the federal circuit courts do not require a showing of bad faith to impose sanctions under Rule 38. *Wilton Corp. v. Ashland Castings Corp*., 188 F.3d 670, 676 (6th Cir. 1999) (finding that at least eight circuits did not require a showing of bad faith).

of law. It was not to reverse a finding of not guilty. Accordingly, Sablan had no personal stake in the appeal—no actual or threat of injury—and had no burden to defend it. Therefore, to the extent Sablan incurred costs in defending the appeal, those costs are hers to bear.[14]

¶ 19 Nevertheless, we found the appeal frivolous, and under the particular facts of this case, we conclude some degree of sanction is warranted. Our own Rule 3(c)(1)(B) requires that a notice of appeal specify the judgment, order, or *part thereof* being appealed. NMI SUP. CT. R. 3(c)(1)(B). The Commonwealth asserts it was appealing an invalidation of a statute, not the acquittal itself. However, in its notice of appeal, it only listed Sablan's Judgment of Acquittal as being appealed. By failing to properly specify the matter for appeal, the Commonwealth unnecessarily muddied the waters. Thus, Sablan's confusion and response in the face of Commonwealth's action is reasonable. Accordingly, though Rule 38 sanction is not warranted as a matter of law, we invoke our inherent authority as an alternate ground to impose monetary sanctions against the Commonwealth for filing a frivolous appeal and deficient notice of appeal.

¶ 20 It is hereby ORDERED that Office of the Attorney General pay, as sanction, the Clerk of this Court $150 and Sablan $150 and single cost incurred in the appeal within thirty days of this order.

IV. CONCLUSION

¶ 21 For the foregoing reasons, the appeal is DISMISSED and sanction GRANTED consistent with this order.

SO ORDERED this 21st day of October, 2016.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
PERRY B. INOS
Associate Justice

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[14] Sablan's costs could have been prevented had she given the Commonwealth an opportunity to identify the nature of the appeal in its docketing statement before moving to dismiss the appeal.