IN THE

Supreme Court

OF THE

Commonwealth of the Northern Mariana Islands

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

ALFREDO E. REYES,
Defendant-Appellant.

Supreme Court No. 2017-SCC-0034-CRM

ORDER DENYING PETITION FOR REHEARING

Cite as: 2020 MP 6

Decided April 24, 2020

CHIEF JUSTICE ALEXANDRO C. CASTRO
ASSOCIATE JUSTICE JOHN A. MANGLOÑA
ASSOCIATE JUSTICE PERRY B. INOS

Superior Court Criminal Action No. 13-0180
Associate Judge Joseph N. Camacho, Presiding

MANGLOÑA, J.:

¶ 1 Defendant-Appellant Alfredo E. Reyes ("Reyes") petitions for rehearing arguing that (1) because he properly preserved his objection to the court's sentencing determinations we should have reviewed the sentence for an abuse of discretion; and (2) we improperly relied on temporary restraining orders in our assessment of the sentence's substantive reasonableness. For the following reasons, we DENY Reyes's petition.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 In 2013, Reyes was convicted of three counts of sexual abuse of a minor in the first degree in violation of 6 CMC § 1306(a)(2). The court sentenced him to the maximum thirty years of imprisonment for sexual abuse without the possibility of parole, probation, early release, work or weekend release, or any other similar program.

¶ 3 On Reyes's second appeal, he argued the court failed to individualize his sentence. We affirmed the 30-year sentence.

¶ 4 In our decision, we applied the standard of review established in *Commonwealth v. Babauta*, 2018 MP 14. We found the court procedurally erred by impermissibly using an element of a crime as an aggravating factor; however, we did not find plain error because "[t]he court relied on a number of other aggravating factors." *Commonwealth v. Reyes*, 2019 MP 6 ¶ 15. This included his criminal history and his manipulation of the victim. We concluded that the impermissible aggravating factor was not "to the exclusion of all other aggravating factors," and we could not say "that the other aggravating factors were not given significant consideration." *Id*. Thus, "[w]hile the court did commit procedural error, it was not such that it affected Reyes's substantial rights" and therefore did not plainly err. *Id*.

¶ 5 We further found the sentence substantively reasonable. We stated: "[t]o be sure, giving the maximum sentence is harsh, but not without reason." *Id*. ¶ 17. The court's reliance on other factors, including the various criminal convictions, temporary restraining orders, and the manipulation used to coerce the victim, were all given consideration. "That the court decided to give more weight to these aggravating factors and less weight to the possible mitigating factors does not render the sentence unreasonable." *Id*.

¶ 6 Reyes now petitions for rehearing.

II. STANDARD OF REVIEW

¶ 7 The petition raises two issues: (1) whether Reyes properly preserved an objection as to the sentence's procedural defects; and (2) whether we improperly relied on the temporary restraining orders in assessing the sentence's substantive reasonableness. A petition for rehearing "must state with particularity each point of law or fact that the petitioner believes the Court has overlooked or misapprehended and must argue in support of the petition." NMI SUP. CT. R. 40(a)(2). Raising the same issues and arguments, or raising new issues not

asserted in the original appeal is not permissible unless extraordinary circumstances exist. *N. Marianas Coll. v. Civil Serv. Comm'n*, 2007 MP 30 ¶ 2. "If a petition for rehearing is granted, the Court may . . . [m]ake a final decision of the case without re-argument; [r]estore the case to the calendar for re-argument or resubmission; or [i]ssue any other appropriate order." NMI SUP. CT. R. 40(a)(4)(A)–(C).

IV. DISCUSSION

A. Objections

¶ 8 Reyes argues he preserved his objections to the sentence's procedural defects and thus his sentence should be reviewed for an abuse of discretion.

¶ 9 In *Commonwealth v. Babauta*, we relied on *Autery v. United States*, 555 F.3d 864 (9th Cir. 2009), a Ninth Circuit decision establishing a bifurcated standard of review in sentencing cases. Scrutinizing a defendant's sentence on appeal is a two-step process. First, we ask whether the court committed any procedural flaws in sentencing the defendant; then, we assess the sentence's substantive reasonableness. As explained in *Babauta*, *Autery* establishes how much deference we are to afford in each step. Procedural defects in a sentence are reviewed for plain error where no objection was raised as to that defect. If the party does raise an objection, we review such procedural defects for an abuse of discretion. On substantive reasonableness assessments, *Autery* takes a liberal approach and holds that such a review requires an abuse of discretion standard. We adopted this bifurcated standard of review, but we left open the question of what qualifies as an objection to a sentence's procedural defects. To answer this, we seek guidance in federal case law.

¶ 10 The United States Supreme Court recently annunciated what may qualify as an objection to challenges of substantive reasonableness in *Holguin-Hernandez v. United States*, 140 S. Ct. 762 (2020). A key component in determining whether a party preserves its objection is determining whether the party "inform[s] the court of the action he wishes to take." *Id*. at 766 (quoting FED. R. CRIM. P. 51(b)). In so doing, "a party ordinarily brings to the court's attention his objection to a contrary decision." *Id*. For claims of substantive unreasonableness, the Court held it would be sufficient for a party to recommend a particular sentence different from the court's ultimately issued sentence. Regarding procedural flaws, the Court declined considering "what is sufficient to preserve a claim that a trial court used improper *procedures* in arriving at its chosen sentence." *Id*. at 767; *see id*. at 767 ("Nevertheless, as we have previously explained, failing to object at all to a procedural error . . . will subject a procedural challenge to plain-error review." (Alito, J., concurring)). Despite this, the Court's reliance on Federal Rule of Criminal Procedure 51(b) is instructive. Where a party informs the court what action it wishes the court to take, that should preserve an objection.

¶ 11 In the case at bar, we do not find Reyes's statements informed the court the action he wished to take adequately enough to preserve an objection. Reyes contends that his objection to the court's actions was informed by the following

statement: "it seems like we are again always focusing on the crime itself, repeating—repeatedly focusing on the crime itself and, you know, that's just not—the sole overriding purpose here is individualization . . . ." *Commonwealth v. Reyes*, Crim. No. 13–0180 (NMI Super. Ct. Jan. 22, 2014) (Sentencing Hr'g Tr. 63). This statement did not refer to anything the court had done up until this point; rather, this was a passing statement during the middle of the sentencing hearing made in response to the prosecutor's views. This inadequately qualifies as an objection, and we see no reason to find error in our review of the court's procedural defects.

B. Temporary Restraining Orders

¶ 12 Reyes maintains the first TRO—issued because he kept his son from attending school for a week—does not justify his thirty-year sentence. He further argues that reliance on the second TRO is improperly based on the underlying conviction.

¶ 13 We reject the claim that it was improper to affirm his sentence partly based on the TROs for three reasons. First, Reyes cites absolutely no authority supporting his claim that TROs may not be used as aggravating factors—either in the petition or in the opening brief. Second, we do not look at a single TRO in isolation but look to the totality of the circumstances. *See Commonwealth v. Borja*, 2015 MP 8 ¶ 39 (mandating courts to consider "both the crime and the offender," and "examine and measure the relevant facts"). Third, we do not think the court abused its discretion when it considered the TROs, especially given the number of other aggravating circumstances. Consequently, we do not find Reyes has sufficiently overcome the demanding standard in granting rehearing; that is, Reyes has failed to propose how we have "overlooked or misapprehended" a point of law or fact.

V. CONCLUSION

¶ 14 For the foregoing reasons, we DENY Defendant-Appellant Reyes's petition.

SO ORDERED this 24th day of April, 2020.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLOÑA
Associate Justice

/s/
PERRY B. INOS
Associate Justice

COUNSEL

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