IN THE

Supreme Court

OF THE

Commonwealth of the Northern Mariana Islands

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

VICTOR VAL HOCOG,
Defendant-Appellant.

Supreme Court No. 2016-SCC-0010-CRM

ORDER GRANTING PETITION FOR REHEARING

Cite as: 2020 MP 7

Decided April 24, 2020

ASSOCIATE JUSTICE JOHN A. MANGLOÑA
ASSOCIATE JUSTICE PERRY B. INOS
JUSTICE PRO TEMPORE ROBERT J. TORRES

Superior Court Criminal Action No. 14-0027
Presiding Judge Roberto C. Naraja, Presiding

PER CURIAM:

¶ 1 Defendant-Appellant Victor Val Hocog ("Hocog") petitions for rehearing in *Commonwealth v. Hocog*, 2017 MP 15. He argues we incorrectly: (1) narrowed our review to the motion to reconsider, (2) held that a sentence need not be suspended to impose probation, and (3) affirmed rehabilitation as a valid, bargained-for term and condition of the plea agreement. For the following reasons, we GRANT Hocog's petition concerning the rehabilitation term in his sentence, VACATE the rehabilitation term, and REMAND to the lower court for resentencing. We DENY Hocog's petition as to expanding our review beyond the denial of reconsideration.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 Hocog was charged with Illegal Possession of a Controlled Substance in violation of 6 CMC § 2142(a)–(b) ("Section 2142") which stated:

> (a) It is unlawful for any person knowingly or intentionally to possess a controlled substance . . . .
>
> (b) Any person who violates subdivision (a) with respect to any controlled substance except marijuana shall be sentenced to a term of imprisonment for not more than five years not subject to suspension, parole or probation, and a fine of $2,000.

6 CMC § 2142(a)–(b) (prior to 2017 amendment).[1] Plea negotiations resulted in a sentence requiring 15 months' imprisonment, a $2,000 fine, and 30 months of drug rehabilitation services after release. Pursuant to the terms in the plea agreement, the court mandated Hocog to receive 30 months of rehabilitation treatment from the Hawaii Habilitat Treatment facility or a similar facility. *Commonwealth v. Hocog*, Crim. No. 14–0027A (NMI Super. Ct. Nov. 5, 2014) (Judgment & Conviction Order at 4). To fund this, the court ordered that the $10,000 he posted as bail be used for the cost of treatment. The court further ordered that if Hocog "fail[ed] theses [sic] conditions, he will be in violation of Criminal Contempt under 6 CMC § 3307, and may face a maximum punishment of up to six months imprisonment, a fine of $100, or both." *Id*. at 5.

¶ 3 Eight months after the judgment of conviction, Hocog moved to correct an illegal sentence pursuant to NMI Rule of Criminal Procedure 35(a). The court denied this motion. Hocog then filed a motion to reconsider which was also denied. Hocog appealed the denial of the motion for reconsideration, arguing that

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[1] The provision was amended just ten days before we released 2017 MP 15. The amendment struck out "not subject to suspension, parole or probation." However, Public Law 20-31 § 7 expressly indicated that its enactment "shall not affect any proceeding instituted under or pursuant to prior law. The enactment shall not have the effect of terminating, or in any way modifying any liability . . . which shall already be in existence on the date this Act becomes effective." By the time we rendered our decision, Hocog had already been convicted under the prior statute. We analyze the petition in accord with the pre-2017 amendment statute.

"because rehabilitation is inherently a probationary term," the court erred by imposing an illegal sentence. *Commonwealth v. Hocog*, 2017 MP 15 ¶¶ 12, 14. He premises the illegality of the rehabilitation provision on 6 CMC § 4104(a) ("Section 4104(a)") which states: "[w]henever a sentencing Court of the Commonwealth suspends execution or imposition of any sentence of imprisonment . . . the court may impose any terms and conditions of probation . . . ." According to Hocog, this means that a sentence must be suspended first before any condition of probation is imposed. Because the sentence was not suspended before rehabilitation (a probationary term) was imposed, the rehabilitation provision is illegal. Hocog articulated a second argument that the rehabilitation provision constituted an illegal sentence based on the penalty encompassed at Section 2142(b). Namely, that because Section 2142(b) prohibits both suspension of a sentence and probation, the rehabilitation provision could not be imposed.

¶ 4 We responded by announcing that "[r]ehabilitation in this case is not a form of probation, but rather a valid bargained-for term and condition of Hocog's plea agreement." *Id.* ¶ 16. We reiterated what Hocog's counsel explicitly stated in the plea agreement and at the plea hearing, that rehabilitation is not a probationary term. *Id.* As a result, "the relevant legal question is whether the court may allow rehabilitation as a condition of a plea agreement." *Id.* ¶ 17. We agreed that it did. Accordingly, the court did not abuse its discretion and we affirmed the denial of Hocog's motion to reconsider. *Id.* ¶ 29.

¶ 5 Hocog timely petitions for rehearing of our decision.

III. STANDARD OF REVIEW

¶ 6 Hocog raises three issues: (1) because an illegal sentence may be appealed at any time, we incorrectly narrowed our review to the motion for reconsideration; (2) no statutory authority exists to impose rehabilitation; and (3) as a probationary term, rehabilitation cannot be imposed without a suspended sentence. A petition for rehearing "must state with particularity each point of law or fact that the petitioner believes [we have] 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.

IV. DISCUSSION

A. Jurisdiction

¶ 7 Hocog argues we incorrectly narrowed his appeal to the motion to reconsider because he may appeal the legality of a sentence at any time under NMI Rule of Criminal Procedure 35(a) ("Rule 35(a)"). Pet. Reh'g 1.

¶ 8 We reject this argument. The motion to correct an illegal sentence was itself untimely. Rule 35(a) states that the court may correct an illegal sentence "within the time provided herein for the reduction of sentence." "A motion to reduce a sentence may be made . . . within 120 days after the sentence is imposed." NMI R. CRIM. P. 35(b). The court entered its Judgment of Conviction

and Commitment Order on November 5, 2014. Hocog filed a motion to correct an illegal sentence well beyond 120 days later, on July 31, 2015. Thus, the Rule 35(a) motion was untimely.[2] After the court denied the Rule 35(a) motion, Hocog did not appeal. Instead, he moved for reconsideration. Hocog appealed the court's denial of his motion for reconsideration, but this appeal was over two months after the court's denial of his Rule 35(a) motion. NMI Supreme Court Rule 4(b)(1) requires that a notice of appeal be filed within thirty days of the entry of the order being appealed. Hocog did not file an appeal of the Rule 35(a) denial within the time prescribed by the NMI Supreme Court Rules. Finally, Hocog himself conceded that he only appealed the motion to reconsider and not the Rule 35(a) motion. *See* Reply Br. 1. These considerations taken together justified limiting our review to the motion to reconsider.

B. Rehabilitation

¶ 9 This petition for rehearing hinges on whether a rehabilitation term creates an illegal sentence. The argument relies on viewing rehabilitation as a probationary term which cannot be imposed because (1) Section 2142 does not permit probation; and (2) his sentence was not suspended under Section 4102(a). *See* Pet. Reh'g 7 ("[T]here is nothing contained within 6 CMC § 2142(b) that authorizes the imposition of rehabilitation or probation, which would allow for probationary conditions including drug treatment."). He also maintains that rehabilitation cannot be imposed without a statute explicitly permitting such a sentencing provision.

¶ 10 The argument that the court did not comply with statutory authority in crafting his sentence is erroneous. Under 6 CMC § 4105(a) "the court may suspend or modify all or part of a sentence and order probation or other sentencing where that action is deemed to be in the best interests of justice." This gives sentencing courts broad latitude in fashioning a sentence. We carefully note, however, that courts are not to render a sentence that conflicts with other sentencing statutes. Here, the court sentenced Hocog to 15 months' imprisonment, a $2,000 fine, and 30 months of drug rehabilitation services after release. The only limitation is found in Section 2142, which limits the maximum term of imprisonment to five years and the maximum fine to $2,000. Thus, the court did not exceed its mandate to fashion a sentence "in the best interests of justice" and did not conflict with other sentencing statutes. We therefore reject this argument.

¶ 11 Second, we affirm our finding that rehabilitation, in this context, is not a probationary term. Hocog argues that rehabilitation is probation and therefore is not permitted under Section 2142, which prohibits probation.[3] Yet, Hocog has

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[2] The plain language of Rule 35(a) states "[t]he court may *correct* an illegal sentence at any time," but it does not state that an illegal sentence may be *appealed* at any time." NMI R. CRIM. P. 35(a) (emphasis added).

[3] Hocog's counsel in the plea agreement and at the plea hearing admitted that rehabilitation is not a form of probation. *See Hocog*, 2017 MP 15 ¶ 16.

not given us reason to agree with him and simply ignores our determinations, stating: "[t]he finding that rehabilitation is not a probationary term does not cure the defect." Pet. Reh'g 4. Thus, the argument that rehabilitation cannot be imposed because Section 2142 forbids probation fails.

¶ 12 Because rehabilitation is not a probationary term, the remaining argument concerning suspended sentences has no merit. To reiterate, Hocog argues that for rehabilitation to be imposed (a form of probation according to Hocog), his sentence must first be suspended. However, Section 2142 forbids suspended sentences and probation. *See* 6 CMC § 2142(b) ("Any person who violates subdivision (a) with respect to any controlled substance except marijuana shall be sentenced to a term of imprisonment for not more than five years *not subject to suspension, parole or probation*, and a fine of $2,000." (emphasis added)) (before 2017 amendment). Since it would be impossible for Hocog's sentence to be suspended per Section 2142, the argument necessary fails.

¶ 13 Despite this, we still vacate the rehabilitation term in Hocog's sentence based on an assessment of its reasonableness.[4] In *Commonwealth v. Palacios*, we determined that a sentencing court may abuse its discretion "if no reasonable person would have imposed the same sentence." 2014 MP 16 ¶ 12. In *Commonwealth v. Babauta*, we found that the sentencing court plainly erred in issuing the defendant's sentence. 2018 MP 14. There, we opined that several mitigating factors were available to the defendant: "(1) [he had] no criminal history before the crime; (2) [he] was relatively young at the time of the offense []; (3) [he] expressed genuine remorsefulness; (4) [he] had people speak and write on his behalf to attest to his character; and (5) [he] carries significant responsibility for his family's well-being." *Id.* ¶ 19. Despite this and both parties' attempt to reduce the defendant's sentence, the court "more than doubled the original concurrent ten-year sentence to a consecutive twenty-one-year sentence without any justification." *Id.* ¶ 21. We thus vacated the defendant's sentence and remanded for re-sentencing.

¶ 14 Here, we find the court abused its discretion in imposing an unreasonable sentence. The court mandated that Hocog receive 30 months of rehabilitation treatment from the Hawaii Habilitat Treatment facility or a similar facility. Judgment and Conviction Order at 4. To fund this, the court ordered that the $10,000 which Hocog's mother posted as bail "be used for treatment at Habilitat or a substantially similar rehabilitation program." *Id.* It did not make any findings concerning Hocog's eligibility for admission to a long-term addiction treatment

[4] Throughout the post-sentencing and appellate proceedings, Hocog has attempted to vacate his sentence on the basis of its purported illegality. We hold here that the rehabilitation provision in his sentence is not illegal. Despite this, we find that the circumstances are unique in that we find the sentence unreasonable, despite its legality. Though our determinations are not premised on the illegality of the sentence, we still take issue with the sentence rendered. Ordinarily, we would request supplemental briefing. However, we do not find it necessary to request supplemental briefing from the parties and dispose of this issue on our review of the reasonableness of his sentence.

center, the costs and duration of the long-term treatment program, or his ability to pay for the rehabilitation program. It simply ordered that Hocog receive 30 months of rehabilitation treatment. There is also no discussion of responsibility for payment of any costs in excess of $10,000 and it is unrealistic to expect that $10,000 would be enough to pay for Hocog to live in Hawaii and attend a residential treatment program for 30 months when the cost of living in Hawaii is one of the most expensive in the United States. It behooves the court to evaluate and render a sentence which a defendant can carry out. Here, it is particularly unlikely that Hocog could even carry this burden. Despite this, the court determined that should Hocog "fail[] theses [sic] conditions, he will be in violation of Criminal Contempt . . . and may face a maximum punishment of up to six months imprisonment, a fine of $100, or both." *Id* at 5. Hocog's likely inability to fund rehabilitation services outside the CNMI coupled with holding contempt over Hocog's head for an indeterminate period of time—and therefore the possibility of imprisonment—make this term simply unreasonable.

¶ 15 We do not find that we overlooked a point of law or fact in regard to the alleged illegality of Hocog's sentence. However, in the interests of justice, we find that Hocog's sentence with respect to the rehabilitation provision was unreasonably rendered. The court abused its discretion in issuing such a sentencing provision and we vacate this provision.

V. CONCLUSION

¶ 16 For the foregoing reasons, we DENY Hocog's petition to expand our review beyond the motion to reconsider, GRANT Hocog's petition as it concerns his rehabilitation term, VACATE the rehabilitation term, and REMAND to the trial court for re-sentencing consistent with this Order.

SO ORDERED this 24th day of April, 2020.

/s/
JOHN A. MANGLOÑA
Associate Justice

/s/
PERRY B. INOS
Associate Justice

/s/
ROBERT J. TORRES
Justice Pro Tempore

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