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IN THE

Supreme Court

OF THE

Commonwealth of the Northern Mariana Islands

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

JOHN SANTOS ALDAN,
Defendant-Appellant.

Supreme Court No. 2017-SCC-0032-CRM

ORDER DENYING PETITION FOR REHEARING

Cite as: 2020 MP 21

Decided November 13, 2020

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

Superior Court Criminal Action No. 16-0011
Associate Judge Teresa Kim-Tenorio, Presiding

CASTRO, C.J.:

¶ 1 The Commonwealth petitions for rehearing of our opinion in *Commonwealth v. Aldan*, 2020 MP 20. It asserts that we misapprehended the plain meaning of 6 CMC § 1319, our statute governing the admissibility of DNA evidence, as well as the facts of the DNA database involved in this case and our previous holding in *Commonwealth v. Taitano*, 2018 MP 12. It further argues that we erred in not remanding on the issue of parole eligibility. For the following reasons, we DENY the petition.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 John Santos Aldan ("Aldan") was convicted of Sexual Assault in the First Degree and Disturbing the Peace for assaulting the daughter of a family friend. The evidence used to secure conviction included DNA analysis using the Y-STR method. Bode Cellmark Forensics, the lab that conducted the analysis, used a database of largely mainland United States samples. The defense's expert, Dr. Philip B. Danielson ("Dr. Danielson"), argued that this database was inappropriate in the context of our Commonwealth. The prosecution's expert, Christina H. Nash ("Nash"), an analyst at Bode Cellmark, disagreed. This DNA analysis was admitted over the defense's objection after a *Daubert* hearing. Apart from the DNA evidence, physical evidence, the victim's injuries, and witness testimony were instrumental to the prosecution's case.

¶ 3 The jury convicted Aldan and the court sentenced him to thirty years for sexual assault and six months for disturbing the peace. It denied his eligibility for parole without providing reasoning. Aldan appealed, contending that the conviction should be reversed because the DNA analysis was wrongly admitted. In the alternative, he requested that we vacate the sentence because it was mechanically imposed and insufficiently individualized, and that we vacate denial of parole eligibility.

¶ 4 We found that the court erred in admitting the Y-STR DNA analysis because the database used did not fit the facts of the case as required by NMI Rule of Evidence 702(d). *Aldan*, 2020 MP 20 ¶ 23. However, we upheld the conviction, finding the error harmless because even without the DNA analysis there existed substantial independent evidence of Aldan's guilt. *Id*. ¶ 27. We found no mechanical or insufficiently individualized sentencing but vacated the restriction on Aldan's parole eligibility because the court did not provide reasoning. *Id*. ¶ 36.

II. DISCUSSION

¶ 5 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.

A. 6 CMC § 1319

¶ 6 The Commonwealth first argues that we misconstrued 6 CMC § 1319, our statute governing the admissibility of DNA evidence, by looking outside the plain language to the legislative history and the persuasive authority of Alaska law. It asserts, mistakenly, that we "appl[ied] the *Frye* standard instead of *Daubert*." Pet. 4.

¶ 7 The Commonwealth believes that it was inappropriate for us to consider the legislative history of this statute, which used an Alaska law as a drafting model. It cites our declaration that "[w]hen interpreting a statute, we aim 'to effect the plain meaning of [its] object'; our principal responsibility is to effectuate the legislature's intent." Pet. 5 (quoting *Commonwealth v. Ogumoro*, 2017 MP 17 ¶ 28). We went on to qualify that "[w]hen reading the text, however, we are guided not by a single sentence or member of a sentence, but [by] looking to the provisions of the whole law, and to its object and policy." *Ogumoro*, 2017 MP 17 ¶ 28 (citation omitted). That is precisely what we did in our *Aldan* analysis. In passing the law, the Legislature explicitly stated that the policy goal of the DNA admission provision was "to bring the Commonwealth Code in line with the law of other jurisdictions." PL 12-82 § 1. Effectuating the intent of the legislature required understanding why it chose the drafting language that it did.

¶ 8 From the plain language of the statute alone, it is clear that the effect is specifically to provide a lower threshold of admissibility than *Frye*. The statutory language "[t]he admission of the DNA profile does not require a finding of general acceptance in the relevant scientific community" directly echoes the *Frye v. United States* opinion, 293 F. 1013 (D.C. Cir. 1923). There, the D.C. Circuit stated, "while the courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained *general acceptance in the particular field* in which it belongs." *Id.* at 1014 (emphasis added). The legislative intent was to remove the general acceptance requirement for admissibility of DNA evidence.

¶ 9 Our holding here was simply that, post-*Crisostomo*, Section 1319 does not lower the threshold of admissibility any further than already provided by the NMI Rules of Evidence, which embed the *Daubert* standard. *See Commonwealth v. Crisostomo*, 2018 MP 5 ¶¶ 17–19. Section 1319 does not remove the various hurdles to admissibility under the Rules of Evidence, including Rule 702(d)'s fit requirement. The interpretation of Alaska's statute in *Peters v. State*, cited in the petition, in fact supports our reasoning. 18 P.3d 1224 (Alaska Ct. App. 2001). The *Peters* court held that "[a]dmitting a DNA profile match without evidence that *properly* interprets the significance of the DNA match could be very misleading" and a "jury might therefore give undue weight to a DNA profile match in a case where no evidence has been presented showing the significance of the match," much as we held in *Aldan*. *Id.* at 1227 (emphasis added). Rule 702(d) simply adds the requirement that statistical evidence showing the

significance of the match be tailored to fit the facts of the case to avoid misleading the jury. The Commonwealth has not made a showing that we erred as to this question of statutory interpretation.

B. DNA Database

¶ 10 Next, the Commonwealth asserts that we misapprehended the facts regarding the absence of Micronesian samples from the database used by Bode Cellmark. It alleges, "the Commonwealth's expert, Ms. Nash, testified that the US Y-STR database does include a 'hodgepodge of different ancestry including Filipino-Philippines, *people from Guam*, Asia, and East Indian.'" Pet. 7 (quoting Tr. 171) (emphasis in original).

¶ 11 The Commonwealth simply mischaracterizes the record. When the context is restored, Ms. Nash was in fact referring to backgrounds that were *not* known to be represented in the database. She stated, "[T]he database that we use doesn't contain any males living in the Micronesian region . . . . Although we *don't* have individuals labeled as Micronesian or, um, the other two genetic backgrounds that were discussed previously, um, *those backgrounds* have been listed as containing a hodgepodge of different ancestry . . . ." Tr. 151 (emphases added). In context, Ms. Nash was referring to the population genetics of Marianas communities, saying that they were *not* known to be in the database. The petition's selective quotation is materially misleading. This Court did not mistake the facts here.

¶ 12 Additionally, the Commonwealth reiterates its argument that the confidence interval suffices to correct for the absence of known Micronesian samples. We expressly rejected this view in our opinion. *Aldan*, 2020 MP 20 ¶ 22. This argument has been raised before and does not justify rehearing. *Commonwealth v. Reyes*, 2020 MP 6 ¶ 7.

C. Taitano

¶ 13 The Commonwealth next argues that we misapplied the holding of our prior opinion in *Taitano*, 2018 MP 12. We distinguished *Taitano* on the ground that the database discussed in that case, unlike the one here, included known Pacific Islander samples. *Aldan*, 2020 MP 2020 ¶ 17. The petition asserts that "the database in Taitano that was used, did not include any Pacific Islands." [sic] Pet. 8.

¶ 14 *Taitano* is indeed factually distinguishable. The expert in *Taitano*, unlike the Commonwealth's expert here, specifically chose a Pacific Islander database to get the best available match to the facts of the case. *Commonwealth v. Taitano*, No. 2016-SCC-0021-CRM (NMI Sup. Ct. Mar. 10, 2017) (App. at 54) ("[W]e used our pacific islander database."). He in fact testified that "from the self-reporting of the individuals providing samples there are . . . specifically individuals in that database that are reported to be from the Northern Mariana Islands." *Id*. at 113.

¶ 15 The legal issues in *Taitano* are likewise distinguishable. In that case, our analysis found the methodology of DNA analysis reliable under Rule 702(c).

Taitano, 2018 MP 12 ¶¶ 22–28. We likewise found Y-STR analysis reliable under 702(c) here. *Aldan*, 2020 MP 20 ¶ 11. Here, however, we considered the 702(d) "fit" prong, which was not the focus of our *Taitano* opinion and found a mismatch between the expert's methodology and the facts of the case. Our holdings in *Taitano* and *Aldan* are not inconsistent, and we did not misapprehend the law as to this issue.

D. Parole Eligibility

¶ 16 Finally, the Commonwealth insists that we should have remanded to the trial court for findings regarding parole eligibility. It emphasizes that "under most circumstances, remand for resentencing is the appropriate and preferred action by a reviewing court." Pet. 11 (quoting *Commonwealth v. Hocog*, 2019 MP 5 ¶ 33).

¶ 17 But "[w]hether we refrain from remand despite vacatur will hinge on whether the proscribed and improper portion of the sentence is severable from the rest of the sentence." *Hocog*, 2019 MP 5 ¶ 33. The effect of our vacating the court's restriction on parole eligibility was simply to restore the default operation of the parole statute, 6 CMC § 4252. We upheld the rest of the sentence here, so our vacatur of the parole restriction portion was severable and refraining from remand was appropriate. The Commonwealth relies on our statement in *Hocog* that "[w]hether we sever the proscribed and improper portion of parole will be determined on a case-by-case basis and be granted only in rare circumstances." *Id*. But there, our disposition was identical to our disposition in *Aldan*. The trial court in *Hocog* had given no justification for restricting the defendant's parole eligibility entirely, and we vacated this provision without disturbing the remainder of the sentence. The purpose of remand is not to retrofit a post hoc justification on an abuse of discretion; this is the same circumstance we were faced with in *Hocog*. Here, too, the Commonwealth has not shown that we misinterpreted the law.

III. CONCLUSION

¶ 18 The Commonwealth has failed to make a showing that we misapprehended an issue of law or fact. The petition for rehearing is therefore DENIED.

SO ORDERED this 13th day of November, 2020.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
PERRY B. INOS
Associate Justice

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NOTICE