

FOR PUBLICATION

Appeal No. 02-013

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

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff/Appellee,**

v.

**ALEX A. CAMACHO and
SIDNEY T. CAMACHO,
Defendants/Appellants.**

OPINION

Cite as: *Commonwealth v. Camacho*, 2002 MP 14

Criminal Case No. 96-0337
Argued and submitted Aug 5, 2002
Decided August 13, 2002

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BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate, Justice; and JOHN A. MANGLONA, Associate Justice

DEMAPAN, Chief Justice:

¶1 Defendant Alex A. Camacho [hereinafter Camacho] appeals a trial court order granting the Commonwealth of the Northern Mariana Islands' [hereinafter Government] motion to modify bail conditions of release. The trial court held that it was prohibited by statute from setting a defendant's bail during the period of time between a finding of guilt and the announcement of sentence. Camacho is currently in custody pending sentencing. We have jurisdiction pursuant to the collateral order doctrine.¹ *Commonwealth v. Hasinto*, 1 N.M.I. 377, 384-85 (1990); 1 CMC § 3102(a). We reverse and remand.

FACTS AND PROCEDURAL BACKGROUND

¶2 In December, 1996, the Government charged Camacho with one count of second-degree murder and one count of aggravated assault and battery. On December 11, 1996, the court released Camacho on bail after he posted a \$100,000 property bond. On May 29, 2002, the jury found Camacho guilty of the lesser included offense of involuntary manslaughter and aggravated assault. As a result of the jury's finding, Camacho now

¹ We have jurisdiction over final judgments and orders of the Superior Court. *Commonwealth v. Hasinto*, 1 N.M.I. 377, 384-85 (1990); 1 CMC § 3102(a). Bail orders are not final judgments, however, an exception to the requirement of finality is the collateral order doctrine. The collateral order doctrine holds that :

An interlocutory order warrants immediate appeal when: [1] the order constitutes a complete, formal, and in trial court, final rejection of the claim the order addresses. [2] . . . the claim is . . . collateral to, and separable from the principle issue . . . whether or not the accused is guilty of the offense charged. [and] [3] The order involved rights . . . that would be significantly undermined if appellate review . . . were postponed until after conviction and sentence.

United States v. Harper, 729 F.2d 1216, 1220 (9th Cir. 1984) (citations omitted). *See also Hasinto*, 1 N.M.I. at 384 n.6.

We find that the denial of bail in this case is subject to the collateral order doctrine. First, the trial court's ruling on the issue of bail constitutes a complete, formal and final rejection of a criminal defendant's claimed right; thereby satisfying the first prong of the test. Second, the very nature of a bail decision is such that it is collateral to, and separate from the guilt or innocence of an accused. Finally, the question of a bail order for the time period between verdict and sentence is such that it would become moot if review awaited an appeal of the entire case.

faces a possible combined maximum sentence of fifteen years incarceration and a \$15,000 fine. Sentencing is set for August 29, 2002.

¶3 Following the return of the verdict, the Government orally requested that Camacho be remanded to the custody of the Division of Corrections pending sentencing. Camacho objected, and the trial court continued release under the terms of the 1996 bail order. On June 3, 2002, the Government renewed its request that Camacho be remanded to custody. On June 19, 2002, the court granted the Government's motion and ordered Camacho into custody pending sentencing.

¶4 In its decision, the trial court examined both the Commonwealth Rules of Criminal Procedure and the Commonwealth Criminal Code. Specifically, it highlighted a purported conflict between the Com. R. Crim. P. 46 (c) and 6 CMC § 6402(b). The court found that Rule 46(c) allowed it to set bail in a case when a defendant had been found guilty, but had not yet been sentenced. However, it ruled that the plain wording of section 6402(b) prevented it from setting bail in the same situation. Ruling that section 6402(b) trumped Rule 46(c), the court found that it did not possess the authority to set bail in the period of time between the finding of guilt and sentencing. Defendant now appeals the trial court's decision.

ISSUE PRESENTED AND STANDARD OF REVIEW

¶5 The issue before us is whether the trial court has the authority to set bail for a defendant who has been found guilty of a crime and is awaiting sentencing. This issue is a question of law subject to de novo review. *Commonwealth v. Lizama*, 3 N.M.I. 400 (1992), *aff'd*, 27 F.3d 444 (9th Cir. 1994).

ANALYSIS

¶6 This appeal arises from the Government’s claim that a conflict exists between the Commonwealth Criminal Code and the Commonwealth Rules of Criminal Procedure as they relate to the issue of bail for a defendant who has been convicted but has not yet been sentenced.

¶7 According to 6 CMC § 6402(b), “[a]fter conviction bail may be allowed *only if a stay of execution of the sentence has been granted* and only in the exercise of discretion by a court authorized to order a stay or by a judge thereof.” 6 CMC § 6402(b) (emphasis added).

¶8 However, under Rule 46(c) of the Commonwealth Rules of Criminal Procedure, “[a] person who has been convicted of an offense and is either *awaiting sentence* or has filed an appeal shall be treated in accordance with the provisions of Rule 46(a)(1) through (6).” Com. R. Crim. P. 46(c) (emphasis added).²

¶9 The government, citing *Commonwealth v. Bordallo*, 1 N.M.I. 208 (1991) *appeal after remand*, 2 N.M.I. 226 (1991), argues that, because this issue involves the conflict between a statute and a rule, the statute must “prevail.”

¶10 Camacho urges that we follow the precedent set in *Babauta v. Superior Court*, 4 N.M.I. 309 (1995), *aff’d* 106 F.3d 406 (9th Cir. 1997) (Decision Without Published Opinion), where we looked to the history of the Commonwealth Criminal Code and found that a statute which conflicted with a specific rule of criminal procedure had no authority, as its presence in the Commonwealth Criminal Code was due solely to being

² Commonwealth Rules of Criminal Procedure 46(a)(1) through (6) set out conditions to be considered by the trial court in setting bail for individuals charged with a crime.

“inadvertently overlooked” by the legislature at the time it was adopted from the Trust Territory Code.

¶11 We elect to use a third approach. We address the place of judicially proposed rules of procedure in the constitutional scheme of the Commonwealth of the Northern Mariana Islands [hereinafter CNMI], and the complementary nature of Com. R. Crim. Pro. 46(c) and 6 CMC § 6402(b).

1. The Authority of the Supreme Court of the Northern Mariana Islands Rests in the Commonwealth Constitution.

A. Prior to 1997 – Statutory Judiciary

¶12 Prior to 1997, the authority of the judicial branch was statutory in nature, delegated to it by the legislature.³ For purposes of statutory construction, rules issued by courts with statutory grants of authority are “comparable to administrative regulations with their relative standing in the hierarchy of law.” NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 36.06 at 69 (5th ed. 1992) [hereinafter SUTHERLAND].

While it is customary to speak of the delegation of legislative power, such delegation does not operate to divest the delegating legislature of any of its constitutional power. Consequently the legislature always retains

³ An example of the legislature’s control over the judicial branch prior to 1997 can be seen in Public Law 6-25 (the “Commonwealth Judicial Reorganization Act of 1989”). The Legislature noted the purpose of PL 6-25 as follows:

The Legislature recognizes that pursuant to [Covenant § 402] the Commonwealth reserved to itself all rights to control the appellate jurisdiction of its courts, and to invest such appellate jurisdiction in such court or courts as in its discretion it deemed appropriate. The Legislature also recognizes that pursuant to the Covenant it chose to invest that jurisdiction, by means of [PL 1-5], in the District Court of the Northern Mariana Islands, and that in the exercise by the District Court of the jurisdiction so invested, the District Court has at all times in this capacity acted as a court of the Northern Mariana Islands as that term is used in [Covenant § 403]. *It is the policy of the Legislature to retain full sovereignty over the investiture of jurisdiction in the courts which construe the laws of the Commonwealth.* It is the purpose of this Act to withdraw the appellate jurisdiction previously invested in the District Court, and to transfer that jurisdiction to the Supreme Court of the Commonwealth which is created in this Act.

PL 6-25 § 2 (emphasis added).

power to revoke or repeal by direct legislative action, any of the regulations of an agency issued under statutory power.

Id. § 36.03 at 60. *See also State v. Moen*, 738 P.2d 228, 230 (Or. Ct. App. 1987) (in the absence of a statutory restriction, legislatures may limit the powers of statutorily created courts). Thus, prior to 1997, court rules, including the Rules of Criminal Procedure, lacked “legislative” authority and as such, were trumped when in direct conflict with a duly enacted statute.

B. Post 1997 – Constitutional Judiciary

¶13

In the November 1997 general election, CNMI voters ratified House Legislative Initiative 10-3, amending Article IV of the CNMI Constitution. Section 1 of House Legislative Initiative 10-3 states:

Purpose. The legislature initiates this proposed amendment because it recognizes the judicial branch of the Commonwealth Government should be co-equal with and independent of the executive and legislative branches. The current Article IV does not provide constitutional status for the present structure of the courts reorganized pursuant of Public Law 6-25. The Legislature further recognizes that the judicial branch should be established in the Constitution to assure its independence from the executive and legislative branches.

House Legislative Initiative 10-3, HS1, HD1 § 1 (1997). House Legislative Initiative 10-3 transformed the nature of the Supreme Court from “a statutory court into a constitutional judiciary.” *Borja v. Tenorio*, 1998 MP 2 ¶12.

2. When Addressing Matters of Procedure, Judicially Created Rules Have the Same Weight as Statutes.

¶14

The difference between a court with statutory authority and one with constitutional authority is “not merely of academic interest.” *Lucky Dev. Co., Ltd. v. Tokai U.S.A., Inc.*, Civ. No. 90-0828 (N.M.I. Super. Ct. Aug. 20, 1993) (Decision and Order on Remand of Appeal No. 91-0023.) While a statutory court is dependent on the

legislature for its authority and power, a constitutional court exercises its authority as a co-equal branch of government. “If there is expressed or implied constitutional authority for the judiciary to promulgate rules of practice and procedure then this power is regarded as ‘legislative’ power. The rules issued have the status of statutes enacted by the legislature.” SUTHERLAND § 36.06 at 69.

¶15 Constitutional courts are generally acknowledged to have the inherent or implied power to regulate practice and procedure as a necessary function of their duty to efficiently administer cases. See Rosco Pound, *The Rule-Making Authority of the Courts*, 12 A.B.A. J. 555, 600-603 (1926). “At the core of those expressions of the nature of the inherent power of the courts is the preservation of the uniqueness of the courts as elements of government. It is only in aid of the fulfillment of the judicial function that courts possess inherent powers.” *In re DeKalb County Courthouse Fire Sprinkler Sys.*, 454 S.E.2d 126, 127 (Ga. 1995). See also *Nevada v. Second Judicial Dist. Court*, 11 P.3d 1209, 1212-13 (Nev. 2000). The inherent power of the CNMI court to create rules of procedure is expressly recognized in the Constitution, “[t]he chief justice of the Commonwealth may propose rules governing civil and criminal procedure, judicial ethics, admission to and governance of the bar of the Commonwealth, and other matters of judicial administration.” N.M.I. Const. art. IV, § 9.⁴

⁴ “It is the court’s solemn duty to protect the judicial power from legislative encroachment and to preserve the integrity and independence of the judiciary.” *Illinois v. Felella*, 546 N.E.2d 492, 498 (Ill. 1989). [This presents an interesting question regarding the Section 9 requirement that rules proposed by the judiciary are required to be submitted to the legislature and subject to disapproval by the majority of the members of either house. The resolution of this issue is not required for our decision in this case, however, we leave open the question of whether the legislature’s “right of disapproval” represents an impermissible encroachment for another day.]

¶16 Not only did House Legislative Initiative 10-3 change the status of the court itself, but it also had an effect on the rules of procedure, including the Rules of Criminal Procedure, governing the court at that time:

Continuity of Judicial Matters. Upon the effective date of [N.M.I. Const.] Article IV, as amended, the existing supreme court, its justices and employees; the existing superior court, its judges and employees; all existing administrative policies of the judicial branch; all existing cases pending in either court; *all laws, regulations, and rules affecting the judiciary shall continue to exist and operate as if established pursuant to this [N.M.I. Const.] Art. IV, and shall, unless clearly inconsistent, be read to be consistent with [N.M.I. Const.] Art. IV, as amended.*

House Legislative Initiative 10-3, HS1, HD1 § 3 (1997) (emphasis added).

¶17 Reading the Rules of Criminal Procedure that were in place at the time of the 1997 amendment as if they had been established pursuant to the amended constitution, gives them the same status as rules of procedure promulgated by the Court today. In other words, we read the Rules of Criminal Procedure as being legislative in nature and thus having the status of statutes.

3. The Decision to Deny or Set Bail is a Procedural Matter.

¶18 Having determined that the Court's authority to issue rules of procedure is constitutional in nature, we turn to the question of whether the issuance of bail is a matter within the sphere of the court's rule-making authority. We find the reasoning of the Supreme Court of the State of Washington persuasive:

Although a clear line of demarcation cannot always be delineated between what is substantive and what is procedural, the following general guidelines provide a useful framework for analysis. Substantive law prescribes norms for societal conduct and punishments for violations thereof. It thus creates, defines, and regulates primary rights. In contrast, practice and procedure pertain to the essentially mechanical operations of the courts by which substantive law, rights, and remedies are effectuated

Since the inherent power to fix bail is grounded in the power to hold a defendant, and thus relates to the *manner* of ensuring that the alleged offense will be heard by the court, we believe it to be implicit that the right to bail is essentially procedural in nature.

Washington v. Smith, 527 P.2d 674, 676-77 (Wash. 1974); *See also Idaho v. Currington*, 700 P.2d 942, 944 (Idaho 1985) (*citing Smith*, 527 P.2d at 676-77); *Florida ex rel. Harrington v. Genung*, 300 So. 2d 271 (Fla. Dist. Ct. App. 1974). Like the court in *Smith*, we find the power to set bail to be procedural in nature and therefore under the auspices of the Court's constitutionally granted rule-making power.

4. Applying the Rules of Statutory Construction, We Find No Conflict Between Com. R. Crim. P. 46(c) and 6 CMC § 6402(b).

¶19 Rules promulgated by the Court in the administration of justice are fundamentally within the power of the judiciary. Nevertheless, we “accept legislative *co-operation* in rendering the judiciary more effective.” *Burton v. Mayer*, 118 S.W.2d 547, 549 (Ky. Ct. App. 1938) (*citing Dowling, The Inherent Power of the Judiciary*, 21 A.B.A. J. 635). Courts “deny the right of legislative *dominance* in matters of this kind.” *Id.* at 549. This means that questions of dominance between the judiciary's rules and the legislature's statutes only occurs when a statute “directly and irreconcilably conflicts with a rule of this court on a matter within the court's authority,” *Illinois v. Walker*, 519 N.E.2d 890, 893 (Ill. 1988). In such cases, the rule will prevail over the statute. *See Id.* *See also Idaho v. Lewis*, 691 P.2d 1231 (Idaho 1984).

¶20 We are not convinced that 6 CMC § 6402(b) and Rule 46(c) conflict in such a manner as to be fatal to one. *See Estate of Faisao v. Tenorio*, 4 N.M.I. 260, 265 (1995) (statutory provisions are irreconcilable only where there is a positive repugnancy

between them or they cannot mutually coexist).⁵ It is our duty to give effect to both the rule and the statute, if possible. *See Estate of Faisao*, 4 N.M.I. at 265 n.14 (where statutory provisions are capable of co-existence it is the duty of courts to regard each as effective). In other words, we must make all attempts to harmonize our rules of criminal procedure with the Commonwealth Criminal Code. *See e.g., Pennsylvania v. Moyer*, 58 Pa. D. & C. 2d 649 (1972) (holding that the rules of procedure and traffic code should be construed together).

¶21

With the goal of harmonization in mind, we read section 6402(b) and Rule 46(c) *in pari materia*.⁶ We note that section 6402(b) refers to the period of time “after conviction.” The statute considers the possibility that during this particular period (“after conviction”), a stay of execution either will or will not be granted. It is unclear whether the period of time “after conviction” is to be defined as such a time when there is only the binary option of having, or not having, a stay of execution, or whether a third option, where the sentence itself has not been handed down, is to be included. Rule 46(c) allows the trial court to set a defendant’s bail during the period of time after his guilt has been established but before his sentence has been handed down. We read Rule 46(c) in tandem with section 6402(b). Therefore we find that, in section 6402(b), the term “after conviction” must, by necessity, include the period between the time a guilty verdict has

⁵ See also *Lohmiller v. Weidenbaugh*, 469 A.2d 578, 580 (Pa. 1983) (when an act of the general assembly and a rule of procedure relate to the same subject, they must be read *in pari materia* so as to give effect to both).

⁶ “*In pari materia* is a rule of statutory construction whereby the meaning and application of a specific statute or portion of a statute is determined by looking to statutes which relate to the same person or thing and which have a purposesimilar to that of the statute being construed. Statutes *in pari materia* must be read together and all parts of the law on the same subject must be given effect, if possible.” *Collins v. Stockwell*, 671 P.2d 394, 397 (Ariz. 1983).

been announced and the time the defendant is sentenced.⁷

¶22 The trial court has the constitutional authority to set bail at all stages of a criminal proceeding. Together, Rule 46(c) and 6 CMC § 6402(b) provide the trial court with the authority to reconsider its prior bail decisions, taking into account the guilty verdict, in situations where, for whatever reason, a verdict has been returned but sentence has not yet been announced. In making its decision, the court is to exercise its own discretion tempered with its knowledge of the Commonwealth Rules of Criminal Procedure and the Commonwealth Criminal Code.⁸

CONCLUSION

¶23 For the reasons discussed above, we REVERSE the decision of the trial court and REMAND this case for the trial court to render a decision regarding bail.

SO ORDERED this 13th day of August 2002.

/s/ Miguel S. Demapan
MIGUEL S. DEMAPAN, Chief Justice

/s/ Alexandro C. Castro
ALEXANDRO C. CASTRO, Associate Justice

/s/ John A. Manglona
JOHN A. MANGLONA, Associate Justice

⁷ This reading of “after conviction” is in agreement with the use of the term elsewhere within Title 6. [T]he Governor shall, after consultation with the Board of Parole, have the clemency power to grant reprieves, commutations and pardons *after convictions* to any person for all offenses except impeachments. A “reprieve” shall postpone the execution of a sentence. A “commutation” substitutes a lighter penalty for that imposed by the court. A “pardon” ends all penalties or legal disabilities imposed after conviction.

6 CMC § 4251 (emphasis added). In each of the three instances considered, the period of time (“after conviction”) contemplated in the statute occur after sentencing.

⁸ For further guidance the court may look to the federal Bail Reform Act of 1984, 18 U.S.C. § 3142.