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

IN RE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Petitioner.

Supreme Court No. 2015-SCC-0016-PET

Superior Court No. 15-0178D

OPINION

Cite as: 2015 MP 7

Decided October 14, 2015

Matthew C. Baisley, Assistant Attorney General, Office of the Attorney General, Saipan, MP, for Petitioner.

Matthew H. Meyer, Assistant Public Defender, Office of the Public Defender, Saipan, MP, for Respondent.

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

PER CURIAM:

¶ 1 Defendant-Respondent George Norris Langu, Jr. ("Langu") was charged with five counts, including one count of Sexual Assault in the First Degree. After the preliminary hearing, the trial court found no probable cause to believe Sexual Assault in the First Degree was committed, reasoning that recent legislative amendments to the sex crime laws precluded prosecutions where the alleged offender is eighteen years old and the victim is sixteen. The Commonwealth of the Northern Mariana Islands ("Commonwealth") petitions this Court to issue a writ of mandamus instructing the trial court that there is no age-based restriction in the statute addressing Sexual Assault in the First Degree, 6 CMC § 1301. Additionally, the Commonwealth seeks reinstatement of the dismissed charge. For the reasons discussed below, we GRANT the petition and direct the trial court to proceed with the motion to reconsider in accordance with this opinion.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 Langu allegedly broke into sixteen-year-old N.S.'s house where he initiated nonconsensual sexual penetration with N.S. According to the Commonwealth's witnesses, N.S. awoke in the middle of the night, feeling pain in her vagina, with Langu atop her. She screamed for help and tried to fight him off.

¶ 3 Police arrested Langu after N.S. identified him as her assailant. The Commonwealth charged Langu with Burglary, Sexual Assault in the First Degree, Assault and Battery, Disturbing the Peace, and Criminal Mischief.

¶ 4 After the preliminary hearing, the court found probable cause on all charges except for Sexual Assault in the First Degree, and dismissed that charge without prejudice. The court reasoned that amendments to the sex crime laws removed safeguards criminalizing sex between an eighteen to twenty-year-old and a sixteen to seventeen-year-old who does not consent:

> The [c]ourt notes that when the Legislature amended the Sex Crime Laws it inadvertently created a loophole. The Legislature [carved] out an exception to allow for what has been referred to as the "Romeo and Juliet" situation – meaning consenting 16 or 17 [year-olds] having sex with someone who is 18, 19, or 20 years old.
>
> The Legislature inadvertently removed the safeguard for when a 16 or 17 year old does not consent to have sex with someone who is 18, 19, or 20 years old. This case in one of several that the [c]ourt has seen when a 16 or 17 year [old] is allegedly raped but the law [cannot] protect these alleged victims – because there is no law.

> Until the Legislature address[es] this loophole, the [c]ourt must dismiss the charge of Sexual Assault in the First Degree because the allege[d] victim is 16 years old and the defendant is 18 years [old].

Commonwealth v. Langu, Crim. No. 15-0178D (NMI Super. Ct. Sept. 15, 2015) (Order Finding Probable Cause 2) [hereinafter Order] (bolding and underlining omitted).

¶ 5 The Commonwealth moved for reconsideration of the trial court's probable cause order on September 18, 2015, and the hearing on the motion was scheduled for October 9, 2015.[1] Meanwhile, the Commonwealth petitioned this Court for a writ of mandamus.

II. JURISDICTION

¶ 6 We "have all inherent powers, including the power to issue all writs necessary to the complete exercise of [our] duties and jurisdiction under [the] constitution and the laws of the Commonwealth." NMI CONST. art. IV. § 3; *see also* 1 CMC § 3102(b) ("The Supreme Court has original but not exclusive jurisdiction to issue writs of mandamus, certiorari, prohibition, habeas corpus, and all other writs or orders necessary and appropriate to the full exercise of its appellate and supervisory jurisdiction.").[2]

III. DISCUSSION

¶ 7 The Commonwealth asserts the trial court erroneously read an exception into the Sexual Assault in the First Degree statute, 6 CMC § 1301, thereby prohibiting prosecutions for nonconsensual sex where the offender is eighteen years of age and the victim is sixteen. Sexual Assault in the First Degree occurs when "the offender engages in sexual penetration with another person without the consent of that person . . . ." 6 CMC § 1301(a)(1).

¶ 8 Issuance of a writ of mandamus is an extraordinary remedy, "reserved for the most dire of instances when no other relief is available." *Martens v. Superior Ct.*, 2007 MP 5 ¶ 16. In deciding whether to issue a writ of mandamus, we consider the five *Tenorio* factors:

> 1. The party seeking the writ has no other adequate means, such as a direct appeal, to attain the relief desired;

---

[1] The Commonwealth's motion to reconsider was accompanied by a motion to shorten time, which proposed the hearing be held September 22, 2015, but the trial court set the hearing for October 9, 2015. The Commonwealth moved to stay the trial court proceedings on October 7, 2015, which we granted the following day.

[2] Langu asserts this Court lacks jurisdiction over this matter because the Commonwealth's limited power to appeal criminal cases is subject to the final judgment rule and the order finding no probable cause is not a final judgment. However, this Court's jurisdiction to issue writs is distinct from its jurisdiction to decide appeals. Indeed, that the trial court's order finding no probable cause is not a final order weighs in favor of issuing writ relief. *See infra* ¶¶ 18–19.

2. The petitioner will be damaged or prejudiced in a way not correctable on appeal;
3. The lower court's order is clearly erroneous as a matter of law;
4. The lower court's order is an oft-repeated error, or manifests a persistent disregard of applicable rules; and
5. The lower court's order raises new and important problems, or issues of law of first impression.

Commonwealth v. Namauleg, 2009 MP 13 ¶ 5 (citing *Tenorio v. Superior Court*, 1 NMI 1, 9–10). There is no bright-line rule governing our application of these factors. *Malite v. Superior Ct.*, 2007 MP 3 ¶ 9. Instead, we must balance the five factors and "determine the degree to which each is implicated." *Id.* We evaluate the factors cumulatively, "and proper disposition will often require a balancing of conflicting indicators." *Tenorio*, 1 NMI at 10.

A. Clearly Erroneous as a Matter of Law

¶ 9 We first consider the third *Tenorio* factor because a clearly erroneous decision is a prerequisite to writ relief. *In re Buckingham*, 2012 MP 15 ¶ 10. "The trial court's decision, on a question of law, is accorded more deference within the context of a writ petition than it would be on direct appeal." *Commonwealth v. Commonwealth Utils. Corp.*, 2014 MP 21 ¶ 11. We will deny writ relief if the questioned ruling is supported by "a rational and substantial legal argument." *In re Buckingham*, 2012 MP 15 ¶ 10.

¶ 10 In its order, the trial court dismissed the Sexual Assault in the First Degree charge because N.S. was sixteen years old and Langu was eighteen. The court ruled that it was required to dismiss the charge because Public Law 12–82, which amended a number of sexual offenses, inadvertently legalized nonconsensual sex between sixteen-year-old victims and eighteen-year-old offenders. In its brief to this Court, the trial court asserts the Commonwealth Code "provides two parallel schemes for sexual assault/abuse, depending on the age of the victim." Tr. Ct. Br. 5. The court explains that sex offenses involving minor victims are properly charged as Sexual Abuse of a Minor, whereas offenses with adult victims are charged as Sexual Assault. The trial court claims the legislature failed to criminalize nonconsensual sex when it amended the Sexual Abuse of a Minor statutes to preclude prosecutions of teenagers who were close in age.

¶ 11 Our principal responsibility in statutory construction is to discern and give effect to the intent of the legislature. *Commonwealth v. Saburo*, 2002 MP 3 ¶ 12. To ascertain the Legislature's intent, we first look to the plain language of the statute. *Pac. Fin. Corp. v. Sablan*, 2011 MP 19 ¶ 9. If the statute contains an undefined term, the term is given its ordinary meaning. *Saburo*, 2002 MP 3 ¶ 14. If the statute is ambiguous, we turn to its legislative history for guidance. *Id.*

¶ 12 We begin our analysis with an examination of 6 CMC § 1301(a)(1), which states: "An offender commits the crime of sexual assault in the first

degree if . . . the offender engages in sexual penetration with another person without consent of that person . . . ."[3] Under the plain language of § 1301(a)(1), a person is guilty of Sexual Assault in the First Degree when three elements are met: (1) the offender engages in sexual penetration, (2) with another person, (3) without that person's consent.

¶ 13 Our statute defines, "sexual penetration" as "genital intercourse, cunnilingus, fellatio, anal intercourse, or an intrusion, however slight, of an object or any part of a person's body into the genital or anal opening of another person's body." 6 CMC § 1317(8)(A). This excludes "acts performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical or mental health of the person being treated." 6 CMC § 1317(8)(B). This section also identifies the individuals engaged in sexual penetration as "each party to any of the acts defined as 'sexual penetration' . . . ." 6 CMC § 1317(8)(C).

¶ 14 Under 6 CMC § 1317(10)(A)–(B), an act occurs "without consent" when a person "with or without resisting, is coerced by the use of force against a person or property, or by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone; or . . . is incapacitated as a result of an act of the defendant."

¶ 15 Last, 6 CMC § 103(g) defines a "person" as "any natural human being and, where relevant, a corporation, unincorporated association or other entity."

¶ 16 The plain language of § 1301(a) indicates that the legislature did not intend to legalize nonconsensual sex between a sixteen-year-old victim and an eighteen-year-old offender. A person violates the statute if he or she engages in nonconsensual sexual penetration with another, regardless of the age of the victim or offender. Nothing in the statute indicates an offender cannot be charged for Sexual Assault in the First Degree if the victim is a minor. In contrast, 6 CMC §§ 1306–1309—the statutes governing Sexual Abuse of a Minor—prohibit sex acts regardless of consent. Under those statutes, the ages of the victim and the offender are elements of the offenses.[4] However, the plain language of §§ 1306–1309 does not indicate Sexual Abuse of a Minor is the only sex offense that can be charged when the victim is a minor. Furthermore, Langu concedes that there should be no consideration of age under § 1301 and that the trial court's interpretation of the statute was clearly erroneous.

¶ 17 Because the statutory language is unambiguous, we need not look at the

---

[3] Section 1301(a) also provides other ways an individual can be guilty of Sexual Assault in the First Degree that are not relevant here.

[4] For instance, Sexual Abuse of a Minor in the First Degree occurs if a person who is "16 years of age or older, . . . engages in sexual penetration with a person who is under 13 years of age or aids, induces, causes, or encourages a person who is under 13 years of age to engage in sexual penetration with another person." 6 CMC 1306(a)(1).

legislative history of § 1301(a) and §§ 1306–1309. No rational or substantial argument supports dismissal on the grounds that nonconsensual sex occurred between a sixteen-year-old victim and an eighteen-year-old individual. We therefore conclude the third *Tenorio* factor supports writ relief.

B. Other Means of Redress and Prejudice Not Correctable on Appeal

¶ 18 As to the first and second *Tenorio* factors, the Commonwealth "bears the burden of demonstrating that it lacks other adequate means for obtaining relief, and that it will be irreparably damaged or prejudiced on appeal." *Bank of Saipan v. Superior Ct.*, 2001 MP 5 ¶ 11 (citing *Mafnas v. Superior Ct.*, 1 NMI 74, 79 (1990)); *see Tudela v. Superior Ct.*, 2010 MP 6 ¶ 9 (evaluating first and second *Tenorio* factors together).

¶ 19 Under the facts of this case, there are no other adequate means of redress available. In *Commonwealth v. Crisostimo*, we held that a determination "of no probable cause is not a final judgment" since "[s]uch a determination has no preclusive effect" and the prosecution may simply re-file the charge. 2005 MP 18 ¶ 17. In this case, re-filing will likely prove futile because the finding of no probable cause was premised on an erroneous interpretation of law.[5] Although there is a motion to reconsider pending, the trial court's brief clearly shows that it will not reconsider and change its interpretation of the law.[6] Furthermore, the Commonwealth's injury cannot be remedied upon direct appeal because a determination of no probable cause is not a final judgment. *See id.* (dismissing direct appeal of no probable cause order). Consequently, there are no available avenues for relief, and the Commonwealth will suffer prejudice because it will be unable to effectively prosecute a subset of Sexual Assault in the First Degree cases until this issue is resolved. We therefore conclude the first two *Tenorio* factors also supports issuing a writ.

C. Oft-Repeated Error and New Question of Law

¶ 20 The fourth and fifth factors are whether the "court's order is an oft-repeated error, or manifests a persistent disregard of applicable rules" and whether the "order raises new and important problems, or issues of law of first impression." *In re Cushnie*, 2012 MP 3 ¶ 7 (citing *Tenorio*, 1 NMI at 9–10). These "factors are usually opposite sides of the same coin and are rarely if ever present together." *Xiao Ru Liu v. Commonwealth*, 2006 MP 5 ¶ 20.

¶ 21 The Commonwealth asserts the fourth factor, that there be an oft-repeated error, is satisfied because the trial court's order implies it has declined to find probable cause on the same grounds in the past: "This case is one of several that the [c]ourt has seen when a 16 or 17 year [old] is allegedly raped

---

[5] Nothing in the record here indicates the trial court found the Commonwealth's evidence unconvincing.

[6] In their briefs for this petition and the reconsideration before the trial court, both the Commonwealth and Langu agree that the ages of the offender and the victim are irrelevant to Sexual Assault in the First Degree. The trial court subsequently filed its brief reaffirming its interpretation of the law in the order finding no probable cause.

but the law [cannot] protect these alleged victims – because there is no law." Order 2 (emphasis omitted). However, the Commonwealth fails to identify any prior instances of dismissal of Sexual Assault in the First Degree charges based upon the respective ages of the victim and offender. Absent a showing of prior instances of the same legal error, we are compelled to conclude the fourth *Tenorio* factor weighs against issuing a writ.

¶ 22 As to the fifth factor, we have never considered whether there is an age-based exception to Sexual Assault in the First Degree. "[W]here the resolution of the legal questions raised in the petition will 'add importantly to the efficient operation of the district courts throughout the circuit,' mandamus relief may be warranted." *Mortgages, Inc. v. United States Dist. Ct.*, 934 F.2d 209, 212 (9th Cir. 1991) (quoting *In re Cement Antitrust Litig. (MDL No. 296)*, 688 F.2d 1297, 1303 (9th Cir. 1982)). Here, the trial court's interpretation of the elements of Sexual Assault in the First Degree is in error and the potential for other cases to be dismissed on the same grounds is significant. Because the court indicated it had seen similar cases in the past, there is a risk the error will recur if the law is not immediately clarified.[7] Thus, we conclude the fifth *Tenorio* factor weighs in favor of issuing the writ.

IV. CONCLUSION

¶ 23 For the foregoing reasons, we GRANT the Commonwealth's petition for a writ of mandamus. The trial court clearly erred by dismissing the Sexual Assault in the First Degree charge based on the respective ages of the offender and victim. Accordingly, the trial court shall proceed with the Commonwealth's motion to reconsider the order finding no probable cause for the Sexual Assault in the First Degree charge in accordance with this opinion.[8]

SO ORDERED this 14th day of October, 2015.

---

[7] Appellate courts may issue writs to ensure the orderly functioning of the trial courts. *See Armster v. United States Dist. Court for Cent. Dist.*, 806 F.2d 1347, 1351–52 (9th Cir. 1986) (characterizing a prior decision that directed two district courts to proceed with trial despite an anticipated funding shortage as advisory in nature). Such writs clarify "novel and important questions of law" that are "likely to confront a number of lower court judges in a number of suits before appellate review is possible." *Nat'l Right to Work Legal Def. & Educ. Found., Inc. v. Richey*, 510 F.2d 1239, 1243 (D.C. Cir.1975). Here, delayed resolution of this issue threatens to interfere with the administration of justice. Indeed, prompt filing of the petition for writ is supported by our policy for certainty, judicial economy, and preventing prejudice to the parties. *See Martens v. Superior Ct.*, 2007 MP 5 ¶ 13 (analyzing timeliness of petition for writ of mandamus).

[8] An order lifting the stay of the trial court proceedings will be issued separately.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
PERRY B. INOS
Associate Justice