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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

DONALD A. HOCOG,
Defendant-Appellant.

Supreme Court No. 2014-SCC-0001-CRM

Superior Court No. 13-0076

OPINION

Cite as: 2015 MP 19

Decided December 31, 2015

Michael Sato, Cindy Nesbit, and Eden Schwartz, Assistant Public Defenders, Office of the Public Defender, Saipan, MP, for Defendant-Appellant.

Shannon R. Foley, Assistant Attorney General, Office of the Attorney General, Saipan, MP, for Plaintiff-Appellee.

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

INOS, J.:

¶ 1 Defendant-Appellant Donald A. Hocog ("Hocog") appeals his convictions and sentences for Sexual Abuse of a Minor in the First Degree, Incest, and Assault and Battery. He argues the trial court erred by: (1) failing to read to prospective jurors the full names of child witnesses, (2) convicting him for Incest in violation of double jeopardy, (3) failing to read substantive jury instructions following the close of evidence, (4) refusing to order a presentence investigation report ("PSI"), and (5) failing to meaningfully exercise sentencing discretion. Hocog further asserts this case should be reassigned to a different judge on remand. For the following reasons, we VACATE Hocog's conviction for Incest, VACATE his sentences for Sexual Abuse of a Minor in the First Degree and Assault and Battery, and REMAND to the same judge for resentencing.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 The Commonwealth charged Hocog with four counts: Sexual Abuse of a Minor in the First Degree, Child Abuse, Incest, and Assault and Battery. According to the Information, between May 3, 2005 and May 2, 2006, Hocog, an adult over the age of 18, engaged in sexual penetration with his biological daughter, D.M.H, who was under the age of eighteen at the time.

¶ 3 During voir dire, the Commonwealth read out the full names of the witnesses to the prospective jurors but only gave the initials of three child witnesses, M.S., J.T., and the victim, D.M.H. Following this introduction, defense counsel expressed concern that the parties could not know if jurors had any kind of relationship with the child witnesses without disclosing their full names. The court's immediate response was inaudible, but neither Hocog, the Commonwealth, nor the court read out the full names of the child witnesses at that time. The court continued with voir dire and asked whether any of the prospective jurors had "a close or family relationship with anyone involved in [the] case." Tr. 17. Before supplemental voir dire, defense counsel raised the issue again:

> MR. MEYER: Oh, one moment, Your Honor. Um, I – I brought up a matter earlier and we still haven't addressed that.
>
> THE COURT: Yeah. Did you want them to say the name of the victim in the case?
>
> MR. MEYER: Uh, well there's numerous minor children.
>
> THE COURT: Okay.
>
> MR. MEYER: Um, and so we – we can't know if anybody knows them or not.

> THE COURT: All right. Ms. Brown can raise that up then. Or you can raise it up too yourself.

Id. at 32. Neither party disclosed the full names of the child witnesses during supplemental voir dire.

¶ 4 In its preliminary jury instructions, the court informed the jury that it would give additional instructions, if there were any, at the end of trial.

¶ 5 At trial, D.M.H. testified that Hocog sexually assaulted her several times between 2006 and 2011. She also stated that her father threatened her with a belt if she "made sounds" or told anyone about the assaults. *Id.* at 131. D.M.H.'s younger half brother, M.J.E., testified that through a hole in the wall, he saw Hocog naked, removing D.M.H.'s pants until she was naked, while she cried.

¶ 6 At the close of evidence, the court did not give substantive jury instructions. Instead, the court read one instruction it had not given earlier. It then gave the jury packets of instructions, and directed the jury to consider the instructions as a whole.

¶ 7 The jury found Hocog guilty of Sexual Abuse of a Minor in the First Degree in violation of 6 CMC § 1306(a)(2). The court also found Hocog guilty of Incest in violation of 6 CMC § 1311(a)(1) and Assault and Battery in violation of 6 CMC § 1202(a).

¶ 8 Following the verdict announcement, Hocog requested a PSI, which the court denied. The court justified the denial by noting, "[t]he court is familiar with the case and the defendant. The charges are relatively straightforward, assault with . . . sexual assault of a minor in the first court, incest and assault and battery. They're all stemming from the same . . . incident." Tr. 259. The court sentenced Hocog to the maximum of thirty years imprisonment for his conviction for Sexual Abuse of a Minor in the First Degree and the maximum of five years imprisonment for Incest. The court also sentenced Hocog to one year imprisonment for Assault and Battery. All sentences ran concurrently and without the possibility of parole.

¶ 9 Hocog timely appeals.

II. JURISDICTION

¶ 10 We have jurisdiction over final judgments and orders issued by the Superior Court. NMI CONST. art. IV, § 3.

III. STANDARDS OF REVIEW

¶ 11 We review the sufficiency of voir dire for abuse of discretion. *United States v. Payne*, 944 F.2d 1458, 1474 (9th Cir. 1991) (citing *United States v. Washington*, 819 F.2d 221, 223 (9th Cir. 1987)). Likewise, we review the trial court's refusal to ask the defendant's proposed voir dire question for abuse of discretion. *United States v. Sarkisian*, 197 F.3d 966, 978 (9th Cir. 1999). Double jeopardy claims are reviewed de novo. *Commonwealth v. Quitano*,

2014 MP 5 ¶ 9. Because Hocog failed to object at trial, we review the trial court's failure to read substantive jury instructions at the close of evidence for plain error. NMI R. CRIM. P. 52(b). We review the trial court's refusal to order a PSI for abuse of discretion. *Commonwealth v. Fu Zhu Lin*, 2014 MP 6 ¶ 9. Last, we have discretion to remand to a different sentencing judge when "reassignment is advisable to preserve the appearance of justice" and would not "entail waste and duplication of effort out of proportion to any gain in preserving the appearance of justice." *Commonwealth v. Jong Hun Lee*, 2005 MP 19 ¶ 26 (quoting *United States v. Borrero-Isaza*, 887 F.2d 1349, 1357 (9th Cir. 1989)).

IV. DISCUSSION

¶ 12 Hocog argues six issues on appeal. We address each in turn.

A. Non-Disclosure of the Full Names of Child Witnesses

¶ 13 Hocog argues the court erred by failing to read the full names of the child witnesses during voir dire to ensure the jurors did not have relationships with the children, which interfered with his ability to intelligently use peremptory challenges and left open the possibility for a partial jury. In response, the Commonwealth asserts that the court allowed the parties to supplement voir dire as to the identity of the child witnesses but Hocog failed to do so. The sufficiency of voir dire is reviewed for abuse of discretion. *Payne*, 944 F.2d at 1474. Similarly, a trial court's refusal to ask the defendant's proposed voir dire question is reviewed for abuse of discretion. *Sarkisian*, 197 F.3d at 978.

¶ 14 The NMI Constitution provides "[n]o person shall be deprived of life, liberty or property without due process of law." NMI CONST. art. I § 5. Because the Due Process Clause of the NMI Constitution is patterned after the Due Process Clause of the Fourteenth Amendment of the United States Constitution, reference to federal case law is instructive. *See, e.g., Commonwealth v. Bergonia*, 3 NMI 22, 36 (1992) ("We will apply Article I, § 5, using the same analysis as for the Fourteenth Amendment."). Under the Due Process Clause of the Fourteenth Amendment of the United States Constitution, criminal defendants have the right to an impartial jury. *Morgan v. Illinois*, 504 U.S. 719, 727 (1992) ("[D]ue process alone has long demanded that, if a jury is to be provided the defendant, regardless of whether the Sixth Amendment requires it, the jury must stand impartial and indifferent to the extent commanded by the Sixth Amendment.").

¶ 15 Voir dire helps safeguard the defendant's right to an impartial jury. *See, e.g., Morgan*, 504 U.S. at 729–30 (discussing the purpose of voir dire); *United States v. Anderson*, 562 F.2d 394, 397–98 (6th Cir. 1977) (same). Under NMI Rule of Criminal Procedure 24(a), either the trial court or the parties may conduct voir dire. If the trial court conducts examination, it must allow the parties to conduct supplemental examination or it must itself submit the parties' additional questions. NMI R. CRIM. P. 24(a).

¶ 16 Trial courts have broad discretion over the conduct of voir dire. *Rosales-*

Lopez v. United States, 451 U.S. 182, 189 (1981). However, such discretion is limited by "the essential demands of fairness." *Aldridge v. United States*, 283 U.S. 308, 310 (1931). Thus, an abuse of discretion occurs "if the voir dire does not provide 'a reasonable assurance that prejudice would be discovered if present.'" *United States v. Lancaster*, 96 F.3d 734, 740 (4th Cir. 1996) (quoting *United States v. Flores*, 63 F.3d 1342, 1353 (5th Cir. 1995)); *accord United States v. Baldwin*, 607 F.2d 1295, 1298 (9th Cir. 1979).[1]

¶ 17 Federal appellate courts have found abuse of discretion where the trial court refused to ask prospective jurors whether they are acquainted with witnesses.[2] *E.g.*, *Cook v. United States*, 379 F.2d 966, 971 (5th Cir. 1967) (commenting that trial judge should have asked whether prospective jurors were acquainted with one of the government's witnesses); *Baldwin*, 607 F.2d at 1297 (trial court conducted voir dire and refused defendant's request to ask whether any jurors were acquainted with a witness). In each of these cases, the courts' refusal to ask the proposed question foreclosed the defendant from obtaining that information. In finding error, the appellate courts emphasized the importance of the juror's potential relationships with witnesses to the defendants' ability to intelligently use peremptory challenges. *See Cook*, 379 F.2d at 971 ("The defendant had a right to have the question answered to afford him an opportunity to exercise his peremptory challenges intelligently. The . . . information requested was reasonably necessary to enable the accused to exercise his peremptory challenges."); *Baldwin*, 607 F.2d at 1297 ("defendant had a right to have the question answered to afford him an opportunity to exercise his peremptory challenges intelligently" (quoting *Cook*, 379 F.2d at 971)). However, the trial court does not have an affirmative duty to disclose the full names of witnesses "absent a timely request for expanded *voir dire* by the defense." *United States v. Harris*, 814 F.2d 155, 157 (4th Cir. 1987)

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[1] Citing to *Knox v. Collins*, Hocog argues he is entitled to reversal without a showing of prejudice when a voir dire procedure "effectively impairs the defendant's ability to exercise his challenges intelligently." 928 F.2d 657, 661 (5th Cir. 1991) (citing *United States v. Rucker*, 557 F.2d 1046, 1049 (4th Cir. 1977)). This automatic reversal rule articulated in *Knox* derived from *Swain v. Alabama*. 380 U.S. 202, 219 (1965). However, the United States Supreme Court has since moved away from the automatic reversal rule, reserving automatic reversal for structural errors that "necessarily render[] a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence." *Rivera v. Illinois*, 556 U.S. 148, 150 (2009) (internal quotation marks omitted) (citations omitted). The Supreme Court concluded that the denial of a state-provided peremptory challenge, by itself, does not require automatic reversal. *Id.* at 160–61.

[2] Voir dire is governed by NMI R. CRIM. P. 24 and FED. R. CRIM. P. 24. Because Commonwealth Rule of Criminal Procedure 24 is patterned after Federal Rule of Criminal Procedure 24, reference to federal case law is instructive. *See Commonwealth v. Xiao*, 2013 MP 12 ¶ 47 n.5 ("When a rule of this Court is 'patterned' after a federal rule, it is appropriate to look to how the federal courts have interpreted that rule for guidance.").

(distinguishing *United States v. Brown*, 799 F.2d 134 (4th Cir. 1986), by noting defense counsel did not request the list of witnesses be read at voir dire).

¶ 18 Here, Hocog requested the trial court read out the full names of the child witnesses during the court's voir dire. Instead of reading the child witnesses' full names, the court gave each party the opportunity to disclose the identities of the child witnesses during supplemental voir dire: "All right. Ms. Brown can raise that up then. *Or you can raise it up too yourself*." Tr. 32 (emphasis added). Although the court did not disclose the child witnesses' full names, it did not prevent Hocog from disclosing their identities during supplemental voir dire, unlike the courts in *Cook* and *Baldwin*. Allowing Hocog to supplement the court's voir dire is consistent with NMI Rule of Criminal Procedure 24(a).

¶ 19 Hocog also asserts supplemental voir dire was limited, implying the court gave him insufficient time to disclose the full identities of the child witnesses. The record shows otherwise. Hocog had full control of the questions he wanted to ask the jurors. The fact that he twice brought to the court's attention the issue of the minor witnesses' identities informs us of the importance of that issue to Hocog. When Hocog's time during supplemental voir dire was running out, the court gave him a reminder to finish his questions. The court did not cut him short or prevent him from disclosing the child witnesses' identities. Hocog simply failed to raise the issue when he conducted voir dire. Thus, the court did not interfere with Hocog's ability to obtain the information necessary to intelligently exercise his peremptory challenges. Accordingly, we conclude the trial court did not abuse its discretion by failing to read aloud the full names of the child witnesses.

B. Double Jeopardy

¶ 20 Hocog argues his conviction for Incest violates the Double Jeopardy clause because Incest was a lesser-included offense of Sexual Abuse of a Minor. The Commonwealth concedes that his conviction for Incest violates double jeopardy. We review double jeopardy challenges de novo. *Quitano*, 2014 MP 5 ¶ 9.

¶ 21 Under the Fifth Amendment of the United States Constitution, no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." Likewise, Article I, Section 4(e) of the Commonwealth Constitution provides "no person shall be put twice in jeopardy for the same offense regardless of the governmental entity that first instituted prosecution." Because the Commonwealth's double jeopardy clause is patterned after the federal double jeopardy clause, we turn to federal case law interpreting "the U.S. Constitution's Double Jeopardy Clause to ensure that our interpretation of the Commonwealth Constitution's double jeopardy provision provides at least the same protection granted defendants under the federal Double Jeopardy Clause." *Commonwealth v. Peter*, 2010 MP 15 ¶ 5 (quoting *Commonwealth v. Crisostomo*, 2007 MP 7 ¶ 13).

¶ 22 "Double jeopardy 'protects an individual against: (1) a second

prosecution for the same offense after acquittal; (2) a second prosecution for the same offense after conviction; and (3) multiple punishments for the same offense.'" *Quitano*, 2014 MP 5 ¶ 40 (quoting *Peter*, 2010 MP 15 ¶ 5). As to the third category, we first consider "whether the legislature intended to impose multiple sanctions for the same conduct." *Id.* ¶ 41. We presume "that where two statutory provisions proscribe the same offense, [the] legislature does not intend to impose two punishments for that offense." *Id.* ¶ 42. If there is no clear legislative intent to impose multiple penalties for the same conduct, then we apply the *Blockburger* test: "where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." *Quitano*, 2014 MP 5 ¶ 43 (quoting *Peter*, 2010 MP 15 ¶ 6) (internal quotation marks omitted). This involves comparing the statutory text and determining "if the lesser-included elements are 'a subset of the charged offense[s].'" *Id.* ¶ 43 (quoting *Commonwealth v. Kaipat*, 4 NMI 300, 303 (1995)).

¶ 23 Here, nothing in the statutory text indicates the legislature intended to impose cumulative punishments for the same conduct. *Compare* 6 CMC §1306(a)(2), *with* 6 CMC § 1311(a). Thus, we presume the legislature did not intend to do so. *See Quitano*, 2014 MP 5 ¶ 47 (concluding the legislature did not intend to impose cumulative punishment for assault and battery and aggravated assault and battery when the statutory text was silent as to cumulative punishment). Additionally, both parties agree that there is no legislative history indicating legislative intent to impose cumulative punishments.

¶ 24 The elements of Sexual Abuse of a Minor in the First Degree are: (1) Hocog is eighteen years old or older; (2) he engaged in sexual penetration with D.M.H.; (3) D.M.H. was younger than eighteen years old; and (4) Hocog is D.M.H.'s natural parent. *See* 6 CMC § 1306(a)(2). The elements of incest are that: (1) Hocog is eighteen years old or older and (2) engaged in sexual penetration with (3) "another who is related either legitimately or illegitimately as . . . an ancestor or descendant of the whole or half blood." 6 CMC § 1311(a). Because each of the three elements of Incest are also elements of Sexual Abuse of a Minor in the First Degree as charged, Incest is a lesser-included offense. Thus, Hocog's convictions for Incest and Sexual Abuse of a Minor in the First Degree subject him to multiple punishments for the same offense, in violation of double jeopardy. Accordingly, we reverse Hocog's conviction for Incest.

C. Failure to Read Jury Instructions at the Close of Evidence

¶ 25 Hocog asserts the trial court erred by failing to read jury instructions after the close of evidence. Because Hocog failed to object at trial, we review for plain error. NMI R. CRIM. P. 52(b); *see Quitano*, 2014 MP 5 ¶ 10 (reviewing adequacy of jury instructions for plain error when defendant failed to object at trial). Under plain error review, we determine whether: "(1) there was error; (2) the error was plain or obvious; [and] (3) the error affected the

appellant's substantial rights . . . .” *Commonwealth v. Hossain*, 2010 MP 21 ¶ 29 (internal quotation marks omitted). We may then exercise our discretion to remedy a plain error “only if the error seriously affects the fairness, integrity or public reputation of judicial proceedings.” *Commonwealth v. Salasiban*, 2014 MP 17 ¶ 10 (quoting *Puckett v. United States*, 556 U.S. 129, 135 (2009)).

¶ 26 A court errs by deviating “from a legal rule that has not been intentionally relinquished or abandoned by the appellant.” *Salasiban*, 2014 MP 17 ¶ 10 (citing *United States v. Olano*, 507 U.S. 725, 732–33 (1993)). An “error is plain if it is not subject to reasonable dispute at the time” of review. *Id.* ¶ 11 (internal citation omitted). Under Rule of Criminal Procedure 30, “[t]he court may instruct the jury before or after the arguments are completed or at both times.” Hocog contends the phrase “before or after the arguments are completed” means *immediately* before or after arguments—that is, instructions must be given at after the close of evidence.

¶ 27 We considered the same issue in *Commonwealth v. Jackson*, and concluded Rule 30 requires substantive jury instructions be given after the close of evidence. 2015 MP 16 ¶ 18 (failure to give substantive jury instructions following the close of evidence was reversible error where defendant raised timely objection). The court may give substantive instructions at the beginning of a case, but such instructions must be reiterated following the close of evidence. *Id*. Here, the trial court deviated from Rule 30 by not providing substantive jury instruction following the close of evidence. Furthermore, this error is not subject to reasonable dispute. *See id*.; *Commonwealth v. Santos*, 2014 MP 20 ¶ 10 (noting that failure to give substantive jury instructions at the end of trial was error). Accordingly, we conclude the trial court erred by failing to reiterate substantive jury instructions and such error was plain.

¶ 28 An error affects substantial rights “if there is a ‘reasonable probability’ it affected the outcome of the proceeding.” *Salasiban*, 2014 MP 17 ¶ 11 (quoting *United States v. Marcus*, 560 U.S. 258, 262 (2010)). Here, Hocog fails to demonstrate there is a reasonable probability the court’s failure to reiterate substantive jury instructions affected the outcome of the proceeding. Hocog contends the court’s failure to read jury instructions at the close of evidence affected his due process rights and right to a fair trial. In particular, the court’s failure to repeat substantive instructions could have lead to jury confusion. However, to prevail Hocog must demonstrate there is a reasonable probability the court’s failure to read jury instructions at the close of evidence affected the outcome—that the jury would have found him not guilty had the instructions been read at the close of evidence. Here, Hocog fails to explain why the jury would be more inclined to find him not guilty if the instructions had been read after the close of evidence. This speculative claim that the error could confuse the jury falls short of a reasonable probability that the error affected the outcome. Accordingly, we conclude the plain error did not affect Hocog’s substantial rights.

D. Failure to Order a PSI

¶ 29 Hocog argues the trial court erred by denying his PSI request. The Commonwealth concedes this was error. We review the trial court's refusal to order a PSI for abuse of discretion. *Fu Zhu Lin*, 2014 MP 6 ¶ 9. Rule of Criminal Procedure 32(c)(1) requires that a court order a PSI unless the defendant waives the PSI or the court explains how the record contains adequate information for the court to meaningfully exercise its sentencing discretion.

¶ 30 Ordering a PSI is not mandatory, but "the information that an investigation and report would contain [is]." *Fu Zhu Lin*, 2014 MP 6 ¶ 36. "The importance of the information contained in PSIs flows from a bedrock principle of sentencing: each sentence must be 'careful and individualized.'" *Id.* ¶ 37 (quoting *United States v. Dinapoli*, 519 F.2d 104, 108 (6th Cir. 1975)). Absent the defendant's waiver, Rule 32(c)(1) requires the trial court order a PSI unless the court conducts a de facto PSI before denying the request or explains how the record contains the information a PSI would otherwise provide. *Fu Zhu Lin*, 2014 MP 6 ¶ 42.

¶ 31 In *Fu Zhu Lin*, the trial court erred by denying the defendant's request for a PSI without affirmatively demonstrating how the record contained sufficient information for the court to craft a careful and individualized sentence. *Id.* There, the trial court justified its denial of the PSI by noting that the case was straightforward. *Id.* ¶ 39. We concluded "a court may not refuse to order a PSI merely because the criminal aspect of the case is straightforward." *Id.* ¶ 41. The trial court's justification was inadequate because a PSI is "not designed to analyze the complexity of the case," but rather is intended to ensure the court considers "factors beyond the crime itself" in crafting a careful and individualized sentence. *Id.*

¶ 32 Likewise, the court in this case denied Hocog's request for a PSI because the case was straightforward. Furthermore, the court did not explain how the record contained the information a PSI would provide, nor did it conduct a de facto PSI. Because the court failed to affirmatively demonstrate how the record contained sufficient information for the court to craft a careful and individualized sentence, we conclude the court abused its discretion by failing to order a PSI.

E. Abuse of Sentencing Discretion

¶ 33 Hocog argues the court erred by failing to meaningfully exercise discretion at sentencing. Like our decisions in *Fu Zhu Lin*, 2014 MP 6 ¶ 49, *Salasiban*, 2014 MP 17 ¶ 9 n.4, and *Lizama*, 2015 MP 2 ¶ 23 n.11, we need not reach sentencing discretion arguments because such claims are premature when we vacate sentences on other grounds. Accordingly, we decline to reach the issue of whether the trial court abused its sentencing discretion.

F. Remand to a Different Sentencing Judge

¶ 34 Hocog contends this case should be remanded to a different judge to avoid the suspicion of partiality upon resentencing. Upon remand for

resentencing, a case may be reassigned to a different sentencing judge when there are "unusual circumstances." *Jong Hun Lee*, 2005 MP 19 ¶ 26 (quoting *United States v. Alverson*, 666 F.2d 341, 349 (9th Cir. 1982)) (internal quotation marks omitted). In determining whether a case should be reassigned to a different sentencing judge, we consider:

> (1) the difficulties, if any, that the [ ] court would have at being objective upon remand because of prior information received; (2) whether reassignment is advisable to preserve the appearance of justice; and (3) whether reassignment would entail waste and duplication of effort out of proportion to any gain in preserving the appearance of justice.

Id. (alteration in original) (quoting *Borrero-Isaza*, 887 F.2d at 1357). Only one of the first two factors must be present, each of which are equally important. *Alverson*, 666 F.2d at 349. However, the second factor may be outweighed by "countervailing values of judicial efficiency and feasibility" in cases where reassignment would result in waste and duplication under the third factor. *Id.*

¶ 35 Reassignment is not necessary to preserve the appearance of justice. Here, Hocog argues the case should be reassigned for resentencing because the judge has already expressed the view that he deserves a maximum sentence. He further contends the judge believes "the legislature requires a higher sentence within the statutory range for sex offenders than for others because they are sex offenders." Opening Br. 19. However, Hocog's sentence was based upon information properly before the court: the sexual penetration was full and extensive, he threatened the victim to keep silent, and he is a repeat criminal offender. Furthermore, Hocog's interpretation of the judge's remarks regarding legislative intent for sentencing sex offenders is implausible. When imposing the sentence, the judge stated:

> The legislature has repeatedly issued mandates through legislation requiring mandatory sentences and in fact increased those sentences in regards when there is abuse to children, in particular sexual crimes. The court will note, and in the CNMI our greatest treasure, we value our children above all else. There is only one other crime that . . . carries a higher sentence than sexual abuse of a minor in the first degree and that is the taking of a human life.

Tr. 272–73. These remarks do not reveal a particular belief regarding legislative intent for sentencing sex offenders within the statutory range. Rather, they are statements regarding the seriousness of the crime, as demonstrated by legislative action to increase penalties against sex offenders.

¶ 36 Moreover, considerations of judicial economy weigh in favor of remanding to the same sentencing judge. Hocog asserts the ample appellate record would enable another judge to easily preside over resentencing. However, "where the original judge has gained familiarity with a detailed factual record, which is vital to the determination to be made on remand, and

the reversal is not based on erroneous findings or the admission of prejudicial evidence that would be difficult to erase from the mind," reassignment to a different judge entails "wasteful delay or duplicated effort," and remand to the same judge may therefore be appropriate. *United States v. Robin*, 553 F.2d 8, 9 (2d Cir. 1977). Although new PSI and the existing record may be adequate to prepare a new judge for resentencing, a new judge would need to spend substantial time becoming familiar with the details of the case, including review of the lengthy trial transcript. Thus, the reassignment upon remand would result in wasteful delay and duplicated effort that outweighs any gain in the appearance of justice. Accordingly, we decline to exercise our discretion to remand to a different judge for resentencing.

V. CONCLUSION

¶ 37 For the foregoing reasons, we VACATE Hocog's conviction for Incest. We also VACATE his sentences for Sexual Abuse of a Minor in the First Degree and Assault and Battery and REMAND to the same judge for resentencing.

SO ORDERED this 31st day of December, 2015.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
PERRY B. INOS
Associate Justice