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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
Plaintiff-Appellee,

v.

ANTIPAS RUPUREI,
Defendant-Appellant.

Supreme Court No. 2009-SCC-0003-TRF

Superior Court No. 07-01999

ORDER DISMISSING APPEAL

Cite as: 2017 MP 9

Decided September 21, 2017

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

Betsy Weintraub, Assistant Attorney General, Office of the Attorney General, Saipan, MP, for Plaintiff-Appellee.

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; PERRY B. INOS, Associate Justice; TIMOTHY H. BELLAS, Justice Pro Tempore.

CASTRO, C.J.:

¶ 1 In 2008, Defendant-Appellant Antipas Rupurei ("Rupurei") appealed the trial court's Order of Restitution and Findings of Fact and Conclusions of Law. After an eight year lag in prosecuting his appeal, we consider whether this Court may dismiss his case under the fugitive disentitlement doctrine. For the reasons stated below, we DISMISS his appeal with prejudice.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 The underlying facts of the appeal involve Rupurei's entry of a guilty plea to one count of Reckless Driving. On December 4, 2007, the court approved the plea agreement sentencing Rupurei to six months of probation and to pay restitution to the Commonwealth Utilities Corporation ("CUC") for damaging a telephone pole. The restitution amount was to be determined within ninety days from the judgment and commitment order. However, because neither party produced any evidence regarding the amount of restitution owed within the ninety days, the court ordered CUC to submit the restitution amount to the Office of the Public Defender ("PDO") by April 21, 2008. On May 12, 2008, twenty-one days after the court-imposed deadline, the PDO received a billing summary from CUC.

¶ 3 On May 20, 2008, Rupurei, accompanied by counsel, appeared in court for a restitution and review hearing. At the hearing, the court, unaware CUC submitted a billing to the PDO, found CUC had not provided any documentation regarding the restitution amount and thereby dismissed the restitution claim. Subsequently, the Commonwealth filed a motion to reconsider the dismissal arguing Rupurei knew or should have known the PDO received a billing summary from CUC on May 12. The court, finding good cause, granted the Commonwealth's motion and scheduled a hearing for June 3, 2008, one day before Rupurei's probation expired.

¶ 4 On June 3, 2008, the restitution and review hearing was held before a different judge, and Rupurei appeared with his counsel. There, the judge, indicating his reluctance to reconsider the original judge's prior decision, continued the hearing to another date without expressly extending the period of Rupurei's probation. Rupurei did not object to the continuation of the hearing, but did claim the restitution amount was unjustified and stated he would be requesting a hearing on the matter. On June 4, 2008, Rupurei successfully completed his term of probation. On June 9, 2008, the court issued an order scheduling a review and restitution hearing for July 16, 2008.

¶ 5 On July 16, 2008, the court held a restitution and review hearing. Rupurei did not personally appear but was represented by counsel. Because Rupurei failed to personally appear, the court issued an order to show cause. Soon thereafter,

counsel for Rupurei made a motion for findings of fact and conclusions of law seeking clarification on subject matter and personal jurisdiction.

¶ 6 On August 7, 2008, the court issued its Findings of Fact and Conclusions of Law, determining it had subject matter and personal jurisdiction over Rupurei, and scheduled a restitution hearing for August 27, 2008. After a series of continuances, the hearing was held on December 22, 2008. On January 5, 2009, the court issued an Order of Restitution instructing Rupurei to pay $4,054.31 to CUC. On January 26, 2009, Rupurei appealed the Order of Restitution and the Findings of Fact and Conclusion of Law.

¶ 7 From March 2010 to December 2011, the Clerk of Superior Court requested multiple extensions of time to submit the transcript and record of proceedings. Following the certification of record on February 15, 2012, the Court held Rule 33 appeal conferences in March and in October of 2012, to resolve certain procedural and substantive issues. After Rupurei filed his opening brief, the parties stipulated to stay the appeal pending Rupurei's return to the Commonwealth, noting he had left the jurisdiction shortly after the completion of his probation on June 4, 2008. The Court stayed the appeal and ordered a status report to be filed by June 3, 2013.

¶ 8 On June 3, 2013, the PDO filed a status report indicating Rupurei was residing somewhere in the Federated States of Micronesia and had not returned to the Commonwealth since 2008. Over the following three years, the appeal languished while parties awaited Rupurei's return. On August 10, 2016, the Court ordered the parties to file status reports explaining why the stay should or should not be lifted. In its report, the PDO argued the stay should remain in place because Rupurei had not returned to the Commonwealth since 2008 and the PDO had been unable to locate him. The Commonwealth asserted the stay should not be indefinite and should be lifted to permit the appeal to run its course.

¶ 9 On January 23, 2017, this Court lifted the stay, concluding the PDO failed to demonstrate good cause to continue the stay. Additionally, the Court ordered the parties to show cause why the appeal should or should not be dismissed under the fugitive disentitlement doctrine. The parties filed their briefs. We now consider whether to dismiss the appeal pursuant to the fugitive disentitlement doctrine.

II. JURISDICTION

¶ 10 The Supreme Court has jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art IV, § 3. Rupurei raises a jurisdictional issue on appeal, arguing the trial court lacked jurisdiction to issue the underlying restitution order. We note even if the trial court lacked jurisdiction, "we have jurisdiction on appeal . . . [to] correct[] the error of the lower court in entertaining the suit." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 95 (1998) (internal quotation marks omitted). Accordingly, we have jurisdiction.

III. STANDARDS OF REVIEW

¶ 11 In the ordinary course of appellate review, we address issues properly raised on appeal. Here, however, we are faced with a rare situation where a defendant, in the face of a pending judicial action, has left the Commonwealth and remained absent for nearly a decade. Therefore, the question before this Court is whether we may, in the exercise of our discretion, dismiss an appeal under the fugitive disentitlement doctrine when a defendant who has notice of a pending judicial action has been at large for over eight years and cannot be located through the exercise of reasonable diligence. *See Smith v. United States*, 94 U.S. 97, 97 (1876) ("[We have the] . . . discretion to refuse to hear a criminal case in error, unless the convicted party . . . is where he can be made to respond to any judgment we may render. . . . [W]e are not inclined to hear and decide what may prove to be only a moot case."); *In re Buckingham*, 2012 MP 15 ¶ 16 (recognizing fugitive disentitlement doctrine is part of the common law applicable in the Commonwealth). While we conclude it is appropriate to dismiss this appeal under the fugitive disentitlement doctrine, in order to provide guidance, we will address Rupurei's assertion the trial court lacked jurisdiction to issue the restitution order. Jurisdiction is a question of law subject to de novo review. *In re Estate of Rofag*, 2 NMI 18, 23–24 (1991). However, we decline to consider Rupurei's other issues.

IV. DISCUSSION

a. Fugitive Disentitlement Doctrine

¶ 12 We have the inherent authority to dismiss an appeal brought by a defendant who is considered a fugitive under the fugitive disentitlement doctrine. *Ortega-Rodriguez v. United States*, 507 U.S. 234, 239 (1993) ("It has been settled for well over a century that an appellate court may dismiss the appeal of a defendant who is a fugitive from justice during the pendency of his appeal."). "Traditionally under [the fugitive disentitlement doctrine], a criminal defendant forfeits his right to appeal once he removes himself from the court's power and process by escaping custody and remaining at large during the pendency of his appeal." *Barnett v. YMCA*, 268 F.3d 614, 617 (8th Cir. 2001). The fugitive disentitlement doctrine is not a "jurisdictional bar to the action" because it "does not strip the case of its character as an adjudicable case or controversy." *In re Buckingham*, 2012 MP 15 ¶ 14 (quoting *Molinaro v. New Jersey*, 396 U.S. 365, 366 (1970)). Rather, it is an "equitable doctrine," *id.* ¶ 4, and we have the discretion to decide whether the doctrine is applicable to cases that come before us. *Id.* ¶ 14; *see also Qian Gao v. Gonzales*, 481 F.3d 173, 175 (2d Cir. 2007) ("The fugitive disentitlement doctrine is an equitable doctrine that provides courts with discretion to dismiss the appeal of a defendant or petitioner who is a fugitive from justice during the pendency of the appeal."). The rationales behind this doctrine are manifold, but in brief, we are unwilling to "waste time and resources exercising jurisdiction over litigants who will only comply with favorable rulings of the court." *In re Buckingham*, 2012 MP 15 ¶ 15 (quoting United States v. Oliveri, 190 F. Supp. 2d 933, 935 (S.D. Tex. 2001) (internal quotation marks omitted)).

¶ 13 In order for the fugitive disentitlement doctrine to apply, a defendant must be a fugitive. *Id*. ¶ 17. Whether a defendant "is a fugitive is a question of fact involving two elements: (1) absence from the jurisdiction; and (2) intent to avoid arrest or prosecution." *Id.* ¶ 19 (citing *United States v. Nabepanha*, 200 F.R.D. 480, 482 (S.D. Fla. 2001)). Mere absence is not enough, rather, the defendant must be absent "with the intent to avoid prosecution." *Id*. (internal quotation marks omitted).

¶ 14 In this case, Rupurei's absence from the Commonwealth is undisputed, and thus the first element is met. The remaining question is one of intent, that is, whether he left the Commonwealth with the intent to avoid prosecution. Rupurei argues the second element cannot be met because the record lacks information to indicate he knew his case had not concluded at the time he left the Commonwealth. We disagree.

¶ 15 In *In re Buckingham*, we stated the "intent to avoid prosecution can be inferred where the defendant is aware of pending charges and refuses to surrender to the authorities or return to the Commonwealth." 2012 MP 15 ¶ 19 (citation omitted). "The critical element of proof is [notice] of a pending charge." *Nabepanha*, 200 F.R.D. at 482. We turn to the facts to determine whether Rupurei had notice of the pending restitution claim, and if so, whether he refuses to surrender to the authorities or return to the Commonwealth.

¶ 16 Here, the record is clear that Rupurei knew the restitution claim was pending before he left the Commonwealth. On June 3, 2008, the day before his probation expired, the court held a review and restitution hearing. There, the parties discussed the Commonwealth's motion to reconsider the dismissal of the restitution order. The court, after hearing arguments, noted its reluctance to rule on the motion and determined the order dismissing the restitution claim would be reconsidered at a later date. At the hearing, Rupurei also argued the restitution amount submitted by CUC was not justified and indicated he would be requesting another hearing. Because the issue of restitution was not final at the June 3 hearing, and because Rupurei consented to having the issue readdressed at a later date, it is clear Rupurei knew his case had not concluded when he left the Commonwealth. Since Rupurei had notice[1] of a pending claim, the remaining

[1] In its Findings of Fact and Conclusions of Law, the court states Rupurei personally appeared at the June 3, 2008 hearing. In the Order of Restitution, the court states Rupurei did not appear, but was represented by counsel. The Court, having reviewed the record on appeal, finds Rupurei was present at the restitution hearing on June 3. But even if he was not present, Rupurei was represented by his counsel and was still on island on the hearing date. Accordingly, we conclude Rupurei had notice of the pending restitution claim. *Watson v. Sutro*, 25 P. 64, 65 (Cal. 1890) (stating when defendant is represented by counsel, notice to counsel is deemed constructive notice to defendant); *see also Clay v. Director, Off. of Workers' Comp. Programs, United States Dep't of Labor*, 748 F.2d 501, 502 (8th Cir. 1984) ("When a party is represented by counsel, notice to counsel is, absent exceptional circumstances, notice to the client."); *United States v. Davenport*, 668 F.3d 1316, 1323 (11th Cir. 2012) ("Due process does not

question is whether Rupurei has refused to surrender to authorities or return to the Commonwealth.

¶ 17 Refusal to surrender or return to avoid prosecution requires a showing of specific intent. *See United States v. Wazney*, 529 F.2d 1287, 1289 (9th Cir. 1976) ("This knowledge by appellant that he was wanted by the police, coupled with his failure to submit to arrest, is enough to establish the requisite specific intent to avoid arrest or prosecution."). "[Intent to avoid prosecution] need not be the sole motivating factor causing [the defendant] to remain abroad, to the exclusion of all others." *United States v. $671,160.00 in United States Currency*, 730 F.3d 1051, 1056 n.2 (9th Cir. 2013). As long as the defendant is aware of a pending claim and "declines to enter or reenter" the jurisdiction to avoid prosecution, the intent element is satisfied. *Id.* (internal quotation marks omitted); *see also Matsumoto v. Matsumoto*, 792 A.2d 1222, 1228 (N.J. 2002) ("[Defendant] may, while legally outside the jurisdiction, constructively flee by deciding not to return.") (internal quotation marks omitted).

¶ 18 At the time Rupurei left the Commonwealth, he had actual notice the restitution claim against him was pending. Nonetheless, he left without notifying anyone of his whereabouts, and the various counsel assigned to him over the intervening period of eight years have not succeeded in contacting him. Based on this information, we conclude he has willfully chosen to not reenter the Commonwealth to avoid the restitution claim. To that end, Rupurei's intent to avoid prosecution is evident. Accordingly, he meets the definition of "fugitive," and is not entitled to utilize the resources of this Court to decide his appeal issues.

¶ 19 We reiterate we are unwilling to "waste time and resources exercising jurisdiction over litigants who will only comply with favorable rulings of the court." *In re Buckingham*, 2015 MP 15 ¶ 15. Nor are we inclined to render a decision with no practicable effect. *See Molinaro v. New Jersey*, 396 U.S. 365, 366 (1970) ("No persuasive reason exists why this Court should proceed to adjudicate the merits of a criminal case after the convicted defendant who has sought review escapes from the restraints placed upon him pursuant to the conviction."). Furthermore, dismissing the appeal of a defendant who has left the jurisdiction to evade unfavorable judgment "serves an important deterrent function." *Ortega-Rodriguez*, 507 U.S. at 242; *see also In re Buckingham*, 2012 MP 15 ¶ 26 ("Maintaining the dignity of the court and ensuring the enforceability of court orders are important concerns. Equally important is the goal of deterring avoidance of legal process by flight from the jurisdiction."). Because we find Rupurei a fugitive under the fugitive disentitlement doctrine and underlying

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require that an interested party actually receive notice of the proceedings, nor does it demand that the Government employ the best or most reliable means of ensuring notice. . . . [N]umerous other courts have held that due process can be satisfied by mailing notice of a forfeiture proceeding to a party's attorney . . . ." (internal citation omitted)).

policy concerns weigh in favor of its application, we conclude dismissing the instant appeal is appropriate.

¶ 20 While policy considerations urge against reaching the merits of Rupurei's appeal, we will address the question of jurisdiction raised by Rupurei to provide our courts with guidance.

b. Trial Court's Jurisdiction

¶ 21 Rupurei argues the trial court lacked jurisdiction when it issued the restitution order. He asserts a court has no authority to issue an order of restitution once a defendant's probation expires. He argues, therefore, the trial court lacked jurisdiction when it issued the restitution order in January of 2009 because his probation had expired in June of 2008. Whether a trial court's jurisdiction terminates upon expiration of a probationary period is a question of law; accordingly, this issue is subject to de novo review. *See Nev. D.H.H.S. Div. of Welfare v. Lizama*, 2017 MP 16 ¶ 7 ("Jurisdiction is a question of law reviewed de novo."); *Isla Fin. Servs. v. Sablan*, 2001 MP 21 ¶ 2 ("This is a question of law, which we review de novo); *In re Estate of Rofag*, 2 NMI at 23–24. It is also an issue of first impression in the Commonwealth. Accordingly, we look to persuasive authority from other jurisdictions. *Commonwealth v. Lot No. 353 New G*, 2012 MP 6 ¶ 16 ("When there is no dispositive Commonwealth authority on an issue, we may look to persuasive authority from other jurisdictions.").

¶ 22 We find the California Supreme Court case *People v. Ford*, 349 P.3d 98 (Cal. 2015), factually analogous and instructive. In *Ford*, the defendant entered into a plea agreement after being charged with felony hit and run. As part of the defendant's plea bargain, some charges were dismissed, probation was granted, and he was given an option to have his conviction reduced to a misdemeanor upon completing probation. The plea agreement also provided the defendant would pay restitution. *Id*. at 100.

¶ 23 The defendant was sentenced to six months in jail, three years of probation, and to pay fines and restitution in the amount of $12,456.88. At the request of the defendant, the court reserved jurisdiction to determine additional restitution amounts, such as plaintiff's lost wages. Subsequently, the probation office and the plaintiff determined the full amount of restitution, and the defendant requested time to refute the amount. At the scheduled restitution hearing, the deputy district attorney advised she would not be able to attend, and the defendant agreed to continue the hearing to a later date. However, on the day of the agreed restitution hearing, defendant argued the court lacked jurisdiction to order additional restitution amount because his term of probation had already expired. The court rejected defendant's contention concluding it had jurisdiction and ordered the full amount of restitution. The defendant appealed. *Id*.

¶ 24 The California Court of Appeal affirmed the trial court's ruling noting "completion of a prison term was irrelevant to the court's ability to exercise jurisdiction." *Id.* (internal quotation marks omitted). The defendant then appealed to the California Supreme Court, arguing once again the trial court lacked

jurisdiction when it ordered the full amount of restitution because his probation had expired at that time. The California Supreme Court affirmed the trial court's decision, but did not directly address the issue of jurisdiction. *Id.* at 101. Instead, it concluded because the defendant agreed to continue the restitution hearing to a date after his probationary term expired, he impliedly gave consent to the court's continued exercise of jurisdiction. Accordingly, the court held the defendant was estopped from challenging jurisdiction. *Id.*

¶ 25 In so holding, the *Ford* court discussed two ways a court may lack jurisdiction. First, "a court lacks jurisdiction in a fundamental sense when it has no authority at all over the subject matter or the parties, or when it lacks any power to hear or determine the case. If a court lacks such 'fundamental' jurisdiction, its ruling is void." *Id.* (quoting *People v. Lara*, 226 P.3d 322, 328 (Cal. 2010)). Second, even when a court has fundamental jurisdiction, "the Constitution, a statute, or relevant case law may constrain the court to act only in a particular manner, or subject to certain limitations." *Id.*. As such, when a court "has fundamental jurisdiction but fails to act in the manner prescribed, it is said to have acted 'in excess of its jurisdiction.'" *Id.* (quoting *People v. American Contractors Indemnity Co.*, 93 P.3d 1020, 1024 (Cal. 2004)). However, a court that acts in excess of its jurisdiction does not necessarily lose fundamental jurisdiction. *Id.* Thus, when a court acts in excess of its jurisdiction, its "ruling is treated as valid until set aside." *Id.* In such situation, "waiver, estoppel, or the passage of time" may preclude a party from seeking to set aside the ruling. *Id.* In so discussing, the *Ford* court explained "expiration of a probationary period does not terminate a court's fundamental jurisdiction." *Id.* (citing *In re Bakke*, 720 P.2d 11, 14 (Cal. 1986)).

¶ 26 Additionally, the court balanced the equities and considered relevant public policy:

> [W]e find that defendant's consent to the court's continued exercise of jurisdiction estops him from challenging it here. To hold otherwise would penalize the trial court, the People, and the victim for attempting to accommodate defendant's requests for more documentation. . . . [E]stopping defendant from challenging the jurisdiction of the court to make an award of full restitution in these circumstances—under a schedule to which defendant agreed—promotes the proper functioning of the courts, advances the goals of the probation system, and furthers the objective of ensuring victims of crime receive the restitution they are due.

Id. at 102–03.

¶ 27 Applying the *Ford* court's reasoning, the court had jurisdiction over Rupurei in a "fundamental sense" because it had personal jurisdiction over him and subject matter jurisdiction over his plea agreement. Thus, the expiration of Rupurei's probationary period did not terminate the court's fundamental jurisdiction. Rupurei argues, and we assume without deciding, that a court acts

in excess of its jurisdiction when it orders restitution past a defendant's probationary period. We, however, need not decide that issue because Rupurei, like the defendant in *Ford*, agreed to continue the restitution hearing to a date beyond his probationary period. At the June 3 hearing, Rupurei requested and agreed to continue the restitution hearing to another date. Because his probation would expire on June 4, he knew or should have known the subsequent hearing date would fall outside the probationary period. As such, we find Rupurei impliedly consented to the court's continued exercise of jurisdiction, and hold his consent estops him from challenging the court's jurisdiction to award restitution. To hold otherwise would permit a criminal defendant to dally with the courts by simply agreeing to a hearing date past his probationary period then evade restitution by challenging jurisdiction.

V. CONCLUSION

¶ 28 Pursuant to the fugitive disentitlement doctrine, we hereby DISMISS the appeal with prejudice.

SO ORDERED this 21st day of September, 2017.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
PERRY B. INOS
Associate Justice

/s/
TIMOTHY H. BELLAS
Justice Pro Tempore