

For Publication

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff/Appellee,

v.

RAYMOND B. BLAS,
Defendant/Appellant.

Supreme Court Appeal No. 04-028-GA
Superior Court Traffic Case No. 04-0809-CR

ORDER DENYING MOTION FOR STAY OF SENTENCE

Cite as: *Commonwealth v. Blas*, 2004 MP 26

Petition submitted November 19, 2004
Saipan, Northern Mariana Islands
Decided December 10, 2004

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

PER CURIAM:

¶1 On November 19, 2004, Defendant Raymond B. Blas (“Blas”) filed an *Emergency Ex Parte Motion Under Rule 27(f) for Stay Pending Appeal by Appellant* pursuant to Commonwealth Rules of Appellate Procedure 8(c)¹ and 27(f),² asking this Court to stay his sentence pending appeal. The Commonwealth filed a reply on November 29, 2004. Blas provides an inadequate record, therefore the motion is denied.³

¶2 Blas was charged with a three-count Information. Count I charged him with vehicular homicide in violation of 9 CMC § 7110(a) made punishable by 9 CMC § 7109(d). Count II charged him with driving under the influence of alcohol in violation of 9 CMC § 7105(a)(1)-(5) made

¹ Commonwealth Rule of Appellate Procedure 8(c) reads:

(c) Stays in Criminal Cases. Stays in criminal cases shall be had in accordance with Rule 8(a) herein, and any applicable Rules of Criminal Procedure. Com. R. App. P. 8(c) (emphasis added). Therefore, any stay granted by this Court in a criminal matter is subject to the provisions of Commonwealth Rule of Appellate Procedure 8(a), which reads:

(a) Stay Must Ordinarily Be Sought In The First Instance In Superior Court; Motion for Stay In This Court. Application for a stay of the judgment or order of the Superior Court pending appeal, or approval of a supersedeas bond, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must be made in the first instance in the Superior Court. A motion for such relief may be made to this Court or a justice thereof, but the motion shall show that application to the Superior Court is not practicable, or that the Superior Court has denied an application or has failed to afford the relief which the applicant requested, with the reasons given by the Superior Court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute, the motion shall be supported by affidavits or other sworn statements or declarations under penalty of perjury or copies thereof. *With the motion shall be filed such parts of the record as are relevant*. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the Clerk of this Court and usually will be considered by a single justice of this Court.

Com. R. App. P. 8(a) (emphasis added).

² Commonwealth Rule of Appellate Procedure 27(f) provides in pertinent part:

(3) The [emergency ex parte] motion shall state whether all grounds advanced in support thereof in this Court were submitted to the Superior Court, and, if not, why the motion should not be remanded or denied.

Com. R. App. P. 27(f)(3).

³ Blas asserts that the proper legal analysis is set forth by *Vaughn v. Bank of Guam*, 1 N.M.I. 318 (1990). *Vaughn* is a civil case and its application to a motion to stay execution of sentence pending appeal by a criminal defendant is incorrect. See *Commonwealth v. Martinez*, 4 N.M.I. 18, 20 (1993) (“Com. R. App. P. 9(c) provides the criteria for determining whether to issue a stay of sentence pending appeal.”)

punishable by 9 CMC § 7109(a). Count III charged him with reckless driving in violation of 9 CMC § 7104 (a) made punishable by 9 CMC § 7104(a)-(c). Pursuant to CNMI law, guilt or innocence was determined by the jury on Count I and by the trial court judge on Counts II and III.⁴ The jury found Blas not guilty of the vehicular homicide charge, and the trial court judge found him guilty of driving under the influence of alcohol and reckless driving.

¶3 On November 17, 2004, Blas was sentenced to serve five (5) years imprisonment, all suspended except for one (1) year for the DUI conviction and six (6) months for reckless driving, with both sentences to run concurrently. At sentencing, Blas requested additional time to prepare a motion for stay to this Court, but the request was summarily denied. Blas filed a Notice of Appeal on this same date. The trial court entered its judgment of convictions on November 18, 2004. Blas began serving his sentence on November 29, 2004.

¶4 In *Commonwealth v. Martinez*, 4 N.M.I. 18 (1993), we ruled that in criminal cases, motions to stay sentence based on Commonwealth Rule of Appellate Procedure 8(c) also implicate

⁴ Under the COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA, 48 U.S.C. § 1801 note, *reprinted in* CMC at B-101, *et seq.*, (“Covenant”) Section 501 and N.M.I. Const. art. I, § 8, only the CNMI Legislature has the authority to make the right to a jury trial the same as in the continental United States. *Commonwealth v. Peters*, 1 N.M.I. 466, 473 (1991). Covenant Section 501(a) provides in pertinent part:

To the extent that they are not applicable of their own force, the following provisions of the Constitution of the United States will be applicable within the Northern Mariana Islands as if the Northern Mariana Islands were one of the several states . . . Amendments 1 through 9, inclusive; Amendment 13; Amendment 14, Section 1; . . . provided, however, that *neither trial by jury nor indictment by grand jury shall be required in any civil action or criminal prosecution based on local law*, except where required by local law. (emphasis added).

Covenant § 501(a) (emphasis added). *See also Commonwealth v. Atalig*, 723 F.2d 682, 686 (9th Cir. 1984), *cert denied*, 467 U.S. 1244, 104 S. Ct. 3518, 82 L. Ed. 2d 826 (1984). In addition, 7 CMC § 3101 provides in pertinent part:

Right to Trial by Jury.

(a) *Criminal Actions.* Any person accused by information of committing a felony punishable by more than five years imprisonment or by more than \$2,000 fine, or both, shall be entitled to a trial by a jury of six persons. The Commonwealth Rules of Criminal Procedure apply, except that the jury shall be of six persons or such smaller number as the parties may stipulate with the approval of the court.

7 CMC § 3101(a). *See also* 6 CMC § 2150(a)(8) (right to jury trial in certain criminal prosecutions involving potential property forfeiture); 7 CMC § 2253 (no right to jury in actions against Commonwealth); 7 CMC § 2214 (Commonwealth may demand a jury trial in certain cases); and 8 CMC § 1714(d) (no right to jury in paternity actions).

Commonwealth Rule of Appellate Procedure 9(c).⁵ *Martinez*, 4 N.M.I. at 20. Turning to the federal rules for guidance, we stated:

FED. R. APP. P. 8(c) provides that stays in criminal cases shall be had in accordance with FED. R. CRIM. P. 38(a). FED. R. CRIM. P. 38(a), in turn, provides that a sentence of imprisonment is to be stayed if the defendant is released pending appeal pursuant to FED. R. APP. P. 9(b). Com. R. App. P. 9(b) is patterned after FED. R. APP. P. 9(b) and sets forth the criteria for release of defendants pending appeal. *If eligible for release pending appeal, a stay of sentence is proper.*

Id. (emphasis added).

¶5 Three factors determine whether a defendant is eligible for release pending appeal. Com. R. App. P. 9(c); Com. R. Crim. P. 46(c). A defendant has the burden of establishing that: (1) he will not flee the jurisdiction or pose a danger to any other person or to the community; (2) the appeal is not taken for the purpose of delay; and (3) the appeal raises a substantial question of law or fact likely to result in reversal or in an order for a new trial. *Martinez*, 4 N.M.I. at 20; Com. R. App. P. 9(c); Com. R. Crim. P. 46(c).

¶6 As a threshold requirement, however, Com. R. App. P. 8(a) requires an initial application for a stay in the trial court. Com. R. App. P. 8(a).⁶ Blas failed to pursue a stay in the trial court, insisting that “given the circumstances of this case, it would have been futile to pursue the same with the trial court.” Appellant’s *Rule 27(f) Certification by Counsel for Appellant* (November 18, 2002) at 2. It is hard to imagine how establishing a clear record in the trial court which preserves for

⁵ Under Commonwealth Rule of Appellate Procedure 9(c), the criteria for release, used by the Supreme Court, for appeals from orders respecting release entered prior to a judgment of conviction and for release pending appeal from a judgment of conviction, “shall be made in accordance with Superior Court Criminal Rule 46.” Com. R. App. P. 9(c). “Superior Court Criminal Rule 46” is Commonwealth Rule of Criminal Procedure 46.

⁶ To alleviate confusion, we have recommended the following procedure for pursuing a motion for stay pending appeal: “(1) upon imposition of sentence, a notice of appeal should immediately be filed; (2) the motion for stay of sentence pending appeal should be filed simultaneously or immediately after filing the notice of appeal; (3) the court should allow the opposing party to respond in writing, and should then set an expedited hearing; (4) if, after the hearing, the judge denies the motion, the judge should expeditiously issue a written order setting forth the reason(s) for the denial; and (5) the defendant may then renew the motion for stay with the Supreme Court, attaching the trial court’s order.” *Commonwealth v. Martinez*, 4 N.M.I. 18, 21-22 (1993).

appeal the trial court’s specific legal and factual analysis for determining whether or not to grant a stay is a futile pursuit. Without an adequate record, proper analysis of the three Rule 46(c) factors is not possible.

¶7 Specifically, we are unable to determine if Blas is a flight risk, a danger to the community or any other person, or whether the appeal is taken for the sake of delay. Further, based on the record, we are not satisfied that Blas has met his burden of establishing that his appeal raises a “substantial question” of law or fact likely to result in reversal or in an order for a new trial.

¶8 A “substantial question” of law is one that is “fairly debatable” or “doubtful.” *United States v. Handy*, 761 F.2d 1279, 1283 (9th Cir. 1985). Blas argues that “that there is no doubt” he will prevail on appeal.⁷ In support of this conclusion, he asserts that 9 CMC § 7110(a),⁸ the statutory language specific to vehicular homicide, requires proof beyond a reasonable doubt that defendant “violat[ed] . . . any law applying to the operation or use of a vehicle or to the regulation of traffic[.]” 9 CMC § 7110(a). Because the jury instructions referred to both driving under the influence of alcohol and reckless driving as the traffic offenses to be considered in making the vehicular homicide decision, he argues, the jury’s finding of not guilty on the vehicular homicide charge must result in a subsequent finding of not guilty on the driving under the influence and reckless driving charges.⁹ *Appellant’s Ex Parte Motion for Stay Pending Appeal Pursuant to Rule 8(c)* (November 19, 2004) (“Appellant’s Motion”) at 3. Blas asserts that the trial court’s bench ruling convicting

⁷ *Appellant’s Ex Parte Motion For Stay Pending Appeal Pursuant To Rule 8(c)* (November 19, 2004) at 3.

⁸ Section 7110(a) reads:

§ 7110. Homicide by Vehicle.

(a) Whoever shall unlawfully and unintentionally cause the death of another person while engaged in the violation of any law applying to the operation or use of a vehicle or to the regulation of traffic shall be guilty of homicide when the violation is the proximate cause of the death.

9 CMC § 7110(a).

⁹ Blas fails to provide this Court with a copy of the jury instructions at issue. Without these instructions, we are unable to determine the validity of this assertion.

him of the driving under the influence and reckless driving charges results in inconsistent verdicts and will be reversed on appeal. *Id.*

¶9 Blas does not support his general legal conclusions. First, he relies on language contained in the jury instructions, but fails to provide any such record. *See* Com. R. App. P. 8(a) (“With the motion shall be filed such parts of the record as are relevant.”). Without this information in the record, we cannot determine the potential legal impact of the jury instructions. Second, he presents no legal authority to support his conclusion that an alleged inconsistent verdict must be reversed on appeal.

¶10 Finally, Blas argues that the trial court’s sentencing was inconsistent with what is required under the statute.¹⁰ *See* Appellant’s Motion at 3. He asserts that 9 CMC § 7109(d) requires proof of “grievous bodily injury to any person,” and that the trial court noted at sentencing that no medical testimony was presented by the Commonwealth to prove such injury. Appellant’s Motion at 3. Again, he does not support his assertions with excerpts of the relevant portions of the transcripts and, based on the record provided to us, we have no way of determining how the trial court reached its conclusion.

¶11 The record provided is deficient, and, as a result, Blas has not met his burden of establishing that his appeal raises a serious question of fact or law likely to result in reversal or in an order for a new trial. Because Blas fails to meet his burden under the Rule 46(c) factors, he is not entitled to release pending appeal. A stay of sentence is not proper, and the motion for stay is DENIED.¹¹

SO ORDERED THIS 10TH DAY OF DECEMBER 2004.

¹⁰ Blas points out that under 9 CMC § 7109(d), proof of “grievous bodily injury to any person” is required. *See* 9 CMC § 7109(d). At trial, he argues, no medical testimony was presented by the Commonwealth to establish such bodily harm and, therefore, sentencing under 9 CMC § 7109(d) was improper.

¹¹ On December 7, 2004, Blas requested a full panel hearing. Based on the issues presented, we determined that a full panel review was warranted. *See Order* (December 10, 2004), filed contemporaneously with this decision.

/s/ _____
MIGUEL S. DEMAPAN
Chief Justice

/s/ _____
ALEXANDRO C. CASTRO
Associate Justice

/s/ _____
JOHN A. MANGLONA
Associate Justice