

BEFORE: PETER C. SIGUENZA, Chief Justice, JANET HEALY WEEKS, and BENJAMIN J. F. CRUZ, Associate Justices.

CRUZ, J:

[1] This case is before the court for review on questions of law regarding the Superior Court's jurisdiction over certain probationers and other related procedural questions regarding the extension of probation and the extension and further expansion of a probationer's terms and conditions of probation. We have certified four questions of law from the Superior Court pursuant to Rule 20(a) of the Rules of Appellate Procedure for the Supreme Court of Guam. After reviewing the applicable statutes, the court finds that the Superior Court's jurisdiction is strictly limited by statute in regards to probationers.

FACTUAL AND PROCEDURAL BACKGROUND

[2] A complaint was filed against the Defendant, Rolpherdo R. Anson, for the misdemeanor charges of Driving Under the Influence of Alcohol ("DUI"), Reckless Driving, and Operation of a Motor Vehicle Without a Valid Driver's License. The Defendant pled guilty, pursuant to a plea agreement, to one charge of DUI and Operation of a Motor Vehicle without a Valid Driver's License. The Defendant was placed on one year probation and ordered to pay a fine of one thousand dollars (\$1,000.00) plus court costs and to serve ten (10) days in the Department of Corrections ("DOC"). Furthermore, the court suspended the confinement based on the Defendant's enrollment in an alcohol treatment program which cost two hundred dollars (\$200.00) and the performance of seventy-five (75) hours of community service. The one thousand dollar (\$1,000.00) fine could be converted to community service at the rate of four dollars and seventy-five cents (\$4.75) per hour. Such plea was entered into on May 11, 1993.

[3] On June 28, 1993, the court dismissed restitution. The Defendant had failed to report to Probation on a monthly basis and had not made payment of his fine; therefore, the court, on

September 13, 1993, filed an Order to Show Cause. The Defendant appeared with counsel on October 5, 1993 and a further proceeding was scheduled for December 6, 1993, at which the Defendant failed to appear. A warrant was issued for his arrest. The Defendant appeared with counsel on December 7, 1993, the warrant was vacated, and a further proceeding was then scheduled for January 7, 1994. At the January 7, 1994 hearing, the court ordered the parties to check the records regarding community service. On January 11, 1994, Probation stated that the Defendant had failed to complete his community service hours, pay his fine, or to pay the Alcohol Treatment Program fee. As a result, the court held the defendant in contempt of court and added fifty (50) hours of community services to the terms and conditions of his probation. Defendant was then ordered to complete all conditions by April 4, 1994, and when he failed to comply, the court extended probation three months.

[4] On July 11, 1994, the court ordered the defendant to complete the community service hours and to pay a fifty (\$50) dollar fine by the next hearing date, July 26, 1994. A warrant for the Defendant's arrest was issued on August 16, 1994 and, at that time, the Defendant had still failed to comply with the court's orders. On October 17, 1994, the court extended probation until April 17, 1995 and once again ordered the Defendant to comply with the terms and conditions of his probation. A Violation Report was filed on July 1, 1996 stating that the Defendant had failed to pay the Alcohol Treatment Program fee, his fine, or to complete his community service hours. A Petition for Revocation of Probation was filed on August 26, 1996 and a summons was issued. On May 12, 1997 the court scheduled an evidentiary hearing for January 5, 1998 to determine the issue of whether the court had jurisdiction over the matter. The Superior Court subsequently filed a Request for Certification of Questions of Law with the Supreme Court regarding the issues of the Superior Court's jurisdiction and related questions regarding probation. This court granted the request and certified the questions for review.

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ISSUES

[5] The court, in an order for Certification of Questions dated September 29, 1997, certified the following questions for review:

1. Does the Superior Court retain jurisdiction to revoke the defendant's probation under Title 9 GCA § 80.66(a)(2) pursuant to a Violation Report and a Request for Revocation of Probation, when both the Violation Report and the Request for Revocation were filed after the termination of the period of the Defendant's probation, as extended?
2. If the Defendant's sentence included a term of probation that is for a period of time that is equal to or less than the maximum period stated in 9 GCA § 80.64(a), may the Superior Court extend probation to a point in time that would exceed that period, and if so, could it do so under the circumstances presented here?
3. If the Defendant has defaulted in his payment of a fine that has been imposed as part of his sentence, what is the time limitation, if any, within which the Superior Court must require the Defendant to show cause why he should not be found in contempt of court pursuant to 9 GCA § 80.56?
4. May the Superior Court order the Defendant, if he is not found to have failed contumaciously [sic] to pay his fine, to conform to an extended schedule of payments, beyond the maximum period of probation, either as part of a probationary status or apart from it?

ANALYSIS

[6] This court has jurisdiction over the matter pursuant to 7 GCA § 4105 (1995) and Rule 20(a) of the Rules of Appellate Procedure for the Supreme Court of Guam. Normal standards of review do not apply when addressing certifications of law; instead, the court addresses the matters in the context in which they arise and as if they were presented to the court in the first instance. *State v. Anderson*, 697 A.2d 379, 382 (Del. 1997).

I.

As we have previously ruled in the case of *People v. Angoco*, 1998 Guam 10, the Superior

Court lacks jurisdiction to revoke probation after the probationary period has ended.

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II.

[7] The parties are again in agreement that the statute disallows extension of probation beyond the maximum periods defined by statute. The statute, 9 GCA § 80.64(a) (1993), provides that the period of suspension or probation may not exceed five (5) years for a felony, two (2) years for a misdemeanor and petty misdemeanor, and (one) 1 year for a petty misdemeanor and violations. Statutory language which further provided for extension of up to five (5) years contained within Guam Penal Code § 1231 (1964) was deleted when these provisions were codified as part of the Guam Code Annotated.

[8] Courts of other jurisdictions have also found that where a maximum period of probation is set by statute, extensions are not permitted. *Christian v. State*, 489 A.2d 64, 68 (Md. Ct. Spec. App. 1985). The *Christian* court went through a lengthy analysis tracking the history of the statute which provided a similar legislative background to this jurisdiction's statutes. *Id.* at 66-7. In Maryland, the succeeding statute provides for a maximum period for probation, disallowing the imposition or extension of probation beyond that maximum period, where no such limitation previously existed. *Id.* at 66. Similarly, previously in this jurisdiction, not only was there no mention of a maximum period, but instead there was actually express language allowing for the extension of probation beyond the maximum period. Like Maryland's statute, Guam's previous provision was superseded by a provision which set out the maximum period and provided no exceptions. This court is forced to comply, in this regard, with the express language of the statute.

[9] The Ninth Circuit Court of Appeals has also addressed the issue of whether an extension of probation beyond the statutory maximum is proper. *U.S. v. Rodriguez*, 682 F.2d 827 (9th Cir. 1982). The *Rodriguez* court unequivocally stated that after the maximum statutory period has expired the court no longer has jurisdiction over a defendant. *Id.* at 830; *see also U.S. v. Albano*, 698 F.2d 144, 146 (2nd Cir. 1983) (strictly adhering to the statutory language which provided that "[t]he period of probation, together with any extension thereof, shall not exceed five years").

[10] Although the parties concede that the practice of extending the period is not proper, it is clear from the factual backgrounds that such extensions are a recurring phenomena in this jurisdiction. The alternative to extensions should be for a violation to be reported, a revocation hearing held, probation revoked and re-sentencing to occur, all to be executed in a timely fashion. The Probation Department must file timely reports of violations and the trial courts need to conduct timely hearings in order to determine what the proper course of action may be. Following the above legal conclusion, the court can not automatically extend probation merely to allow the defendant more time to “cure” his violations, for then the trial courts will be left with no recourse once the probationary term has expired.

III.

[11] A fine or restitution can be imposed as the sole sentence or in addition to a sentence of probation or imprisonment. 9 GCA § 80.10(a)(5) (1993). The method by which payment must be made is set forth in 9 GCA § 80.52 (1993) and in the event of default or failure to pay¹, contempt proceedings may follow pursuant to 9 GCA § 80.56 (1993) which provides as follows:

(a) When an offender sentenced to pay a fine or make restitution defaults in the payment thereof or of any installment, the court . . . may require him to show cause why his default should not be treated as contumacious and may issue a summons or a warrant of arrest for his appearance. Unless the offender shows that his default was excusable, the court shall find that his default was contumacious and may order him committed until the fine or restitution or a specified part thereof is paid

9 GCA § 80.56(a). The statute does not present a time limitation on when a defendant may be brought before the court on a contempt proceeding. The only time mentioned in the statute is that such proceedings may not begin until after the fine has not been paid. This can have several interpretations, including that contempt proceedings can commence once it appears that the defendant cannot or will not pay, after the maximum time or after default of an installment. New

¹When an offender fails to pay a fine or make restitution, the response of the court shall be determined only after the fine has not been paid. 9 GCA § 80.52(e).

Jersey cases have made the distinction that a defendant may be ordered to continue to make payments towards his fine beyond the probationary period if it is determined that the fine and the remedies for nonpayment thereof are unrelated to the defendant's probation. *State v. Joseph*, 569 A.2d 819 (N.J. Super. Ct. App. Div. 1990); *see also State v. Zeliff*, 564 A.2d 1213 (N.J. Super. Ct. App. Div. 1989) (holding that a restitution order was not tied to a sentence of probation and thus not governed by the limits on probation).

[12] It is the Defendant's contention that the fine was a condition of probation and thus limited by the statutory confines which govern probation. Even the cases the People have cited would seem to espouse the same idea— that if a fine or restitution is not separate from probation, such fine should be controlled by the applicable laws regarding probation. Although the character of the fine in this case is not clear, this is not a determination which we may properly consider. The only question we can answer is whether and what time limitation exists as to the collection of fines and the holding of a defendant in contempt of court for an unpaid fine which is imposed as part of the terms and conditions of probation. We accept both the People's position and the Defendant's position and adopt the rule that the imposition and collection of fines beyond the probationary period is not proper when the fine was initially part of the terms and conditions of probation.

IV.

[13] The People argue that the court-ordered fine is separate from probation and therefore, it is not improper to extend the payment plan beyond the maximum probationary period. If the default is not contumacious, the court can grant additional time for the defendant to pay. 9 GCA § 80.56(b). Restitution payments need not be coextensive with the probationary period. *State v. Blassingale*, 394 A.2d 362, 365 (N.J. Super. Ct. App. Div. 1978).

[14] The Defendant, however, makes the argument that the fine was part of the terms and conditions of probation and is thus controlled by the statutory limit on probation. Conditions of

probation can only be performed within probation. Since it has been determined that the court can only extend the terms and conditions of probation to a period of time within the statutory period, then it would follow that the payment schedule could not be extended after the same statutory period. Once again the question becomes whether the fines involved were part of the terms and conditions of probation.² This is a question which we need not address specifically to the facts of this case at this time due to the nature of the issues presented before us.

CONCLUSION

[15] Therefore, the court answers the certified questions in the following manner: (1) As to the question of whether the Superior Court retains jurisdiction to revoke probation after the probationary period has expired, we answer in the negative. (2) We also answer in the negative the question of whether the Superior Court may extend probation beyond the statutory maximum. (3) The third question of what time limitation exists is answered by finding that if a fine is imposed as part of probation, then contempt proceedings must be initiated during the probationary period or within a reasonable time thereafter as it cannot be determined whether there has been a failure to pay until the defendant has had a full opportunity to do so. (4) Lastly, the Court once again answers the fourth question in the negative, assuming that no determination was made that the defendant has contumaciously failed to make payment and the fine was part of the terms and conditions of probation.

BENJAMIN J.F. CRUZ, Associate Justice

JANET HEALY WEEKS, Associate Justice

²If payment of a fine was made a condition of probation, the court can move to revoke probation. 9 GCA § 80.66(a) (1993).

PETER C. SIGUENZA, Chief Justice