



Filed

Supreme Court of Guam, Clerk of Court

IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

ERIC T. FAISAO,
Defendant-Appellant.

Supreme Court Case No.: CRA17-013
Superior Court Case No.: CF0021-13

OPINION

Cite as: 2018 Guam 26

Appeal from the Superior Court of Guam
Argued and submitted on February 16, 2018
Hagåtña, Guam

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BEFORE: KATHERINE A. MARAMAN, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; ROBERT J. TORRES, Associate Justice.

CARBULLIDO, J.:

[1] Defendant-Appellant Eric T. Faisao appeals from the post-judgment Findings of Fact and Conclusions of Law and Addendum to Judgment issued by the Superior Court of Guam, ordering Faisao and his co-defendants to pay \$173,440.29 in restitution to the Guam Department of Education (“GDOE”). For the following reasons, we reverse in part and affirm in part.

I. FACTUAL AND PROCEDURAL HISTORY

[2] Eric Faisao was indicted on seven counts of Burglary and one count of Theft of Property (both as second-degree felonies), with a Special Allegation of Crimes Against the Community. The Indictment alleged that Faisao had participated in a string of burglaries at multiple sites, including several public schools.

[3] The trial court accepted a plea agreement between Faisao and the People wherein Faisao pleaded guilty to one count each of Burglary and Theft of Property as second-degree felonies. In the plea agreement, Faisao agreed to be held jointly and severally liable with his co-defendants for restitution to the victims:

Defendant shall be *jointly and severally* liable with his co-actors for restitution to all victims named in police reports subject of this case, to wit: *Finegayan Elementary School, Daniel L. Perez Elementary School, F.B. Leon Guerrero Middle School, Untalan Middle School, Wettengel Elementary School, Hawthorne/CAT*, and the *Guam Football Association*. Defendant agrees to pay restitution that is more than the statutory amount for the offense charged. Defendant may pay restitution in monthly installments, to be determined by the Parole Services Division, and shall pay it in full prior to the termination of his parole. However, in the event restitution is not paid by the expiration of parole, the obligation for restitution shall survive[.]

Record on Appeal (“RA”), tab 119 at 4 (Plea Agreement, Apr. 13, 2015). The trial court entered a judgment of conviction and ordered a restitution hearing.

[4] Subsequent to the acceptance of the plea, the People filed an amended restitution summary, alleging \$254,374.98 in total damages to the victims. The Superior Court held two restitution hearings and considered the testimony and exhibits put forth by the People.

[5] Afterwards, the Superior Court issued its Findings of Fact and Conclusions of Law, finding that \$173,440.29 of GDOE’s restitution claim was valid and ordering Faisao and his co-defendants be jointly and severally liable for restitution in that amount. The Superior Court issued an Addendum to Judgment that included the restitution award, and Faisao timely appealed.

II. JURISDICTION

[6] This court has jurisdiction over appeals from orders made after judgment affecting the substantial rights of the defendant pursuant to 8 GCA § 130.15(c) (2005) and 48 U.S.C.A. § 1424-1(a)(2) (current though Pub. L. 115-281 (2018)).

III. STANDARD OF REVIEW

[7] Whether a defendant has waived the right to appeal in his or her plea agreement is reviewed *de novo*. *People v. Mallo*, 2008 Guam 23 ¶ 10 (citing *United States v. Aguilar-Muniz*, 156 F.3d 974, 976 (9th Cir. 1998)). The question of whether a defendant made a knowing, intelligent, and voluntary waiver is a mixed question of law and fact reviewed *de novo*. *Id.* ¶ 11 (citing *United States v. Robinson*, 913 F.2d 712, 714 (9th Cir. 1990)). Restitution awards are reviewed for abuse of discretion. *Id.* ¶ 12. Issues of statutory interpretation are reviewed *de novo*. *Id.* ¶ 11 (citing *People v. Gutierrez*, 2005 Guam 19 ¶ 13).

IV. ANALYSIS

A. Faisao Did Not Waive His Right to Appeal

[8] As a threshold matter, we first decide whether Faisao waived his right to bring this appeal, as the People suggest, by entering into his plea agreement. The relevant provisions of the agreement read as follows:

6. Defendant stipulates and agrees that if given fair opportunity to pay ~~any fines and~~ restitution ordered by the Court, he will be able to do so. Defendant further understands and agrees that he has an obligation to pay any ~~fine and~~ restitution ordered by the Court and that this obligation survives the expiration of parole, and that expiration of parole does not prevent collection of fines and restitution, pursuant to 9 GCA § 80.56.

....

8. Defendant understands that he has a right to appeal his conviction in this case pursuant to 8 GCA §§ 130.10 and 130.15, and agrees to waive that right for the purpose of this plea.

....

10. Defendant and the government each intend this plea agreement and the sentence imposed be a final sentence and a total and conclusive resolution of the charges described within this plea agreement.

RA, tab 119 at 6 (Plea Agreement) (strikethrough handwritten in original). In *Mallo*, we held that an identically-worded provision to Section 8, where the defendant waived his right to appeal his *conviction*, did not separately bar a defendant from appealing his *sentence*. 2008 Guam 23 ¶¶ 17, 23. Here, the People contend that the inclusion of Sections 6 and 10 in this agreement, which were not present in the *Mallo* plea agreement, is evidence that Faisao knowingly and voluntarily waived his right to appeal his sentence, as well as his conviction. Appellee’s Br. at 10-11 (Dec. 12, 2017). We disagree and find our decision in *Mallo* controls on the facts of this case.

[9] A defendant may waive his or her right to appeal through the terms of a plea agreement. See *Mallo*, 2008 Guam 23 ¶ 15; see also *People v. Camacho*, 2009 Guam 6 ¶ 15. However, a waiver is constitutionally valid only if the defendant entered into the agreement “voluntarily, knowingly, and intelligently, with sufficient awareness of the relevant circumstances and likely consequences.” *Mallo*, 2008 Guam 23 ¶ 15 (quoting *People v. Van Bui*, 2008 Guam 8 ¶ 11) (internal quotation marks omitted). In determining whether the defendant has voluntarily, knowingly, and intelligently waived his right to appeal, we first examine the plain language of the plea agreement, construing any ambiguities in favor of the defendant. See *id.* ¶ 16. This court, and the majority of United States Courts of Appeal, agree that the right to appeal a restitution award must be waived explicitly. See *id.* ¶ 23 (citing *United States v. Cooper*, 498 F.3d 1156, 1159 (10th Cir. 2007)); *id.* ¶ 23 n.2 (collecting cases).

[10] Section 8 of Faisao’s plea agreement is identical to the language the People argued prevented the defendant in *Mallo* from appealing the restitution award in that case. Compare RA, tab 119 at 6 (Plea Agreement), with *Mallo*, 2008 Guam 23 ¶ 17. In *Mallo*, we held that the waiver provision was not sufficiently explicit, and therefore the defendant had not knowingly and voluntarily waived his right to appeal the restitution award. 2008 Guam 23 ¶ 23. The People now urge us to adopt a more holistic approach, much like the First Circuit did in *United States v. Okoye*, 731 F.3d 46, 49-50 (1st Cir. 2013). In *Okoye*, the court held that a plea agreement referencing restitution multiple times throughout had unambiguously established restitution as a term of the defendant’s sentence. *Id.* It further held that the defendant had waived any right to appeal a restitution award by agreeing to a provision waiving the right to appeal “any sentence.” *Id.* The People liken the case before us to that of *Okoye*, asserting that

Sections 6 and 10 make it unambiguous that restitution is an agreed-upon term of Faisao's sentencing, and that Faisao agreed to make his sentencing "final and conclusive," thereby waiving any right to challenge it on appeal. Appellee's Br. at 5-11.

[11] Even if we were inclined to accept the People's argument that Faisao has agreed that his sentence will include having to pay restitution to the victims, the language of Section 10 is not dispositive of the issue of appellate waiver. Section 10 appears directed at recognizing that all outstanding charges are incorporated into—and resolved by—the plea agreement, while section 8 is the provision more directly concerning the issue of appellate waiver. See RA, tab 119 (Plea Agreement). We were clear in *Mallo* that waiver of the right to appeal a restitution award must be explicit. 2008 Guam 23 ¶ 23; see also *Camacho*, 2009 Guam 6 ¶ 24 (finding that waiver of right to appeal sentence must be explicit). Unlike the defendant in *Okoye*, who specifically entered into a plea agreement waiving his right to appeal "any sentence," 731 F.3d at 50, Section 8 states that Faisao is waiving his right to appeal his *conviction*, and makes no mention of sentencing, RA, tab 119 at 6 (Plea Agreement). Even if Faisao understood his sentence would include restitution, the plea agreement does not explicitly state Faisao is waiving his right to challenge his sentence. See *Camacho*, 2009 Guam 18 ¶ 24. If the government wanted Faisao to waive his right to challenge the restitution award, it should have explicitly stated so in Section 8. It did not. Accordingly, we hold that Faisao did not knowingly and voluntarily waive his right to appeal the restitution award. We now address the merits.

B. The Superior Court Erred in Awarding \$86,461.03 in Restitution for Damages to F.B. Leon Guerrero Middle School

[12] We review the trial court's award of restitution for an abuse of discretion. See *Mallo*, 2008 Guam 23 ¶ 12. "[A] court abuses its discretion by basing its decision on an erroneous legal

standard or clearly erroneous factual findings, or if, in applying the appropriate legal standards, the court misapprehended the law with respect to the underlying issues in the litigation.” *Id.* ¶ 56 (quoting *San Miguel v. Dep’t of Pub. Works*, 2008 Guam 3 ¶ 18). Reversal is warranted only if we have a “definite and firm conviction [that] the trial court committed clear error of judgment in its conclusion.” *Id.* (quoting *J.J. Moving Servs., Inc. v. Sanko Bussan (Guam) Co.*, 1998 Guam 19 ¶ 14).

[13] A person who is convicted of a first- or second-degree felony may be sentenced to pay restitution to the victim(s) not exceeding \$10,000.00. 9 GCA § 80.50(a) (2005). However, the court also has the authority to order restitution in a higher amount, up to “double the pecuniary gain to the offender or loss to the victim caused by the conduct constituting the offense by the offender.” 9 GCA § 80.50(e). In such instances, the court must make a finding of the amount of gain or loss. *Id.* In other words, the court may order restitution in an amount up to \$10,000.00 without any specific factual findings when the conviction is a felony in the first- or second-degree, but the court must make specific factual findings if it awards a higher amount based on either the victim’s loss or the offender’s gain. *Id.*; see also *Mallo*, 2008 Guam 23 ¶ 43. We assume—without deciding¹—for purposes of resolving this appeal that if the government seeks restitution greater than \$10,000.00 under section 80.50(e), the government must prove loss or gain by a preponderance of the evidence.

¹ We have not yet addressed the burden of proof that the government bears in this context. Under federal law, the government bears the burden of establishing gain or loss by a preponderance of the evidence. See 18 U.S.C.A. § 3664(e) (current through Pub. L. 115-281 (2018)). This standard, however, is expressly set forth in the relevant statute. See *id.* In contrast, Guam statutory law is silent on this issue. See 9 GCA §§ 80.50-80.58 (2005). Because the parties have not briefed this issue, and the determination of this question does not ultimately affect our resolution of this appeal, we assume solely for purposes of this appeal that a preponderance standard applies. Resolution of this question is left to a future case.

[14] Faisao asserts that the trial court erred in awarding GDOE \$86,461.03 for F.B. Leon Guerrero Middle School (“F.B. Leon Guerrero”) because the government failed to provide sufficient evidence of the damages in that amount. Appellant’s Br. at 19 (Oct. 30, 2017). More specifically, Faisao complains that the sum awarded for F.B. Leon Guerrero damages was based on a combined figure of the cost of repairs to both F.B. Leon Guerrero and the nearby Simon Sanchez High School (“Simon Sanchez”). Simon Sanchez was neither listed as a victim in the indictment, nor listed as a victim in the plea agreement.

[15] We have previously stated that principles of contract law are useful in analyzing plea agreements, even though such principles cannot always be rigidly applied in the criminal law context. *Mallo*, 2008 Guam 23 ¶ 45 (citing *Naron v. Bitanga*, 1999 Guam 21 ¶ 8). Under a contract theory, the plea agreement is a bargained-for exchange between the People and the defendant. *See, e.g., United States v. Tate*, 845 F.3d 571, 575 (4th Cir. 2017) (“[B]oth parties to a plea agreement should receive the benefit of their bargain.”). We first consider the plain language of the agreement and, if the language is clear, hold the parties to the obvious meaning of the agreement. *Mallo*, 2008 Guam 23 ¶ 46 (citing Restatement (Second) of Contracts § 20 (1970)); *see also United States v. Lo*, 839 F.3d 777, 783 (9th Cir. 2016) (“[W]e will generally enforce the plain language of a plea agreement if it is clear and unambiguous on its face.”). If the agreement is ambiguous, however, such ambiguity should be read against the People. *See, e.g., Mallo*, 2008 Guam 23 ¶ 16; *United States v. Jefferies*, 908 F.2d 1520, 1523 (11th Cir. 1990).

[16] The relevant part of the plea agreement reads:

Defendant shall be *jointly and severally* liable with his co-actors for restitution to all victims named in the police reports subject of this case, to wit: *Finegayan Elementary School, Daniel L. Perez Elementary School, F.B. Leon Guerrero*

Middle School, Untalan Middle School, Wettengel Elementary School, Hawthorne/CAT, and the Guam Football Association.

RA, tab 119 at 4 (Plea Agreement). The People argue that we should read any mention of F.B. Leon Guerrero in the agreement as having an implied reference to Simon Sanchez. Appellee's Br. at 18-19. The People point out that it is sometimes GDOE practice to treat F.B. Leon Guerrero and Simon Sanchez as a single campus for maintenance repairs. *See* Transcript ("Tr."), tab 169 at 68 (Further Proceedings, Sept. 30, 2016). The People urge us to read GDOE's practice into its agreement with Faisao. Appellee's Br. at 18-19. In the alternative, the People contend that Faisao agreed to pay restitution for Simon Sanchez by agreeing to be liable for restitution to all victims named in the police reports, which included Simon Sanchez. *Id.* at 20; Tr., tab 165 at 45 (Restitution Hr'g, Dec. 18, 2015).

[17] "[A] central tenet of contract law is that no party is obligated to provide more than is specified in the agreement itself. Accordingly, in enforcing plea agreements, the government is held only to those promises that it actually made to the defendant." *Tate*, 845 F.3d at 575 (quoting *United States v. Peglera*, 33 F.3d 412, 413 (4th Cir. 1994)). So too is the defendant held only to those promises he or she actually makes to the government. Neither the plea agreement nor the indictment makes any reference to Simon Sanchez as a victim for whom the government is seeking restitution. RA, tab 119 (Plea Agreement); RA, tab 18 at 5-7 (Indictment, Jan. 22, 2013). In addition, the People's position is undermined by their use of the phrase "to wit" in drafting the restitution provision. The phrase "to wit" means "that is to say; namely" and is used to clarify or particularize a preceding word or phrase. *To Wit, Black's Law Dictionary* (10th ed. 2014). The use of "to wit" in the restitution provision has the effect of particularizing the phrase "all victims named in the police reports subject of this case" to the enumerated victims

proceeding the phrase. *See, e.g., Sarratt v. Arthur*, 75 So. 365, 365 (Ala. 1917). Had the provision simply stopped at “subject of this case,” the People would have a stronger argument for awarding restitution for repairs to Simon Sanchez because it was a victim listed in the police reports. *See* Tr., tab 165 at 45 (Restitution Hr’g). Instead, the provision was drafted to particularize the scope of restitution to be paid by Faisao and his co-defendants—namely, damages to “Finegayan Elementary School, Daniel L. Perez Elementary School, F.B. Leon Guerrero Middle School, Untalan Middle School, Wettengel Elementary School, Hawthorne/CAT, and the Guam Football Association.” RA, tab 119 at 4 (Plea Agreement) (emphases omitted). Simon Sanchez is notably absent from this enumeration. *Id.*

[18] Where the People seek restitution on behalf of a victim who has been harmed by the defendant’s conduct, the People bear the burden of ensuring the plea agreement contains the necessary terms and conditions to provide restitution recovery for those victims. *See Mallo*, 2008 Guam 23 ¶¶ 47-48 (defendant who agreed to pay restitution for funeral cost and expenses, without further qualifying language, was required to pay restitution to the victim’s brother who had already paid for those expenses); *Nurseryland Found. v. State*, 749 N.E.2d 1240, 1242-43 (Ind. Ct. App. 2001) (denying restitution to victims other than the named victim in the plea agreement because the State did not add terms or conditions requiring defendant to pay restitution to those victims, nor did the plea require the defendant to admit liability or establish a factual basis sufficient to warrant an order of restitution to those victims); *accord State v. Maurer*, 63 N.E.3d 534, 541 (Ohio Ct. App. 2016) (finding no plain error where court ordered defendant to pay restitution to third-party bank not listed as victim in indictment where defendant specifically agreed to pay restitution to bank in plea agreement). Here, the plea agreement does

not mention Simon Sanchez and uses limiting language in the restitution provision. RA, tab 119 (Plea Agreement). Given the agreement's totality, and construing any ambiguities in favor of the defendant, it is clear that Faisao did not agree to pay restitution for damages to Simon Sanchez. *See Tate*, 845 F.3d at 575; *see also Mallo*, 2008 Guam 23 ¶¶ 46-48. Therefore, we find that the trial court erred to the extent that it ordered Faisao to make restitution for any damages attributable to Simon Sanchez.

[19] Although we find that Faisao could not properly be ordered to pay restitution for damages caused to Simon Sanchez under the terms of the plea agreement, Faisao could nevertheless be ordered to pay restitution for damages caused to F.B. Leon Guerrero, assuming such damages were adequately proven by competent evidence. *Cf. People v. Quinata*, 2010 Guam 17 ¶ 55 (finding that a pre-sentence investigation report was insufficient to establish the fact of defendant's ability to pay restitution). As noted above, the prosecution bears the burden of bringing forth sufficient evidence upon which the trial court could rely in making the findings required by 9 GCA § 80.50(e). On the facts of this case, the prosecution failed to meet this burden.

[20] In its Findings of Fact and Conclusions of Law, the trial court awarded \$86,461.03 to GDOE for repair services to F.B. Leon Guerrero. RA, tab 154 at 7 (Finds. Fact & Concl. L. (Restitution), July 31, 2017). It did so based on the testimony of Yolanda Duenas, Program Coordinator II for GDOE's Facilities and Maintenance Division, and a purchase order for the repairs done to F.B. Leon Guerrero and Simon Sanchez. *Id.*; Tr., tab 169 at 18-21 (Further Proceedings, Sept. 30, 2016). When questioned about the purchase order, Ms. Duenas could not discern which amounts of the \$86,461.03 in repairs could be attributed specifically to either F.B.

Leon Guerrero or Simon Sanchez, and the purchase order did not itemize the repairs with regard to each school. *See* Tr., tab 169 at 59-61 (Further Proceedings). As a result, the prosecution failed to offer any proof upon which the Superior Court could properly rely to determine the actual amount of loss attributable to F.B. Leon Guerrero. *See United States v. Adejumo*, 848 F.3d 868, 871 (8th Cir. 2017) (vacating restitution order where evidence of ultimate individual loss to various banks could not be discerned by the record evidence); *cf. HRC Guam Co. v. Bayview II L.L.C.*, 2017 Guam 25 ¶ 87 (affirming ordering setting aside verdict because plaintiff failed to present any evidence of damages). Because there was no factual evidence placed before the Superior Court supporting its factual findings with respect to F.B. Leon Guerrero, its award of restitution was an abuse of discretion. *See Mallo*, 2008 Guam 23 ¶ 56 (quoting *San Miguel*, 2008 Guam 3 ¶ 18).

C. The Superior Court Did Not Err in Awarding the Damages Amount for the Other Schools

[21] Faisao also assigns error to the trial court's award of restitution for damage caused to the other named victims in the plea agreement. He claims that the amounts awarded were not supported by sufficient evidence, citing a lack of detailed invoices, as well as Ms. Duenas's failure to identify the exact scope of work performed at each site. Appellant's Br. at 19-22.

[22] Restitution awards are reviewed for abuse of discretion, and we reverse only where we have a strong conviction that the trial court committed a clear error of judgment. *Mallo*, 2008 Guam 23 ¶ 12. Examining the record and the trial court's decision, it is apparent that the trial court had enough information with which to reach its conclusion. The People's Supplemental Restitution Report provided a breakdown of the cost of labor, supplies, and other expenses GDOE incurred as a result of the theft at each school site. *See* RA, tab 128 at 3-32 (Suppl.

Submission Summ. Report (Re Restitution), May 27, 2015). Yolanda Duenas provided lengthy testimony as to the amounts GDOE billed for repairs. Tr., tab 165 at 70-88 (Restitution Hr'g); Tr., tab 169 at 9-78 (Further Proceedings). The trial court itself rejected a number of claims that were not the result of actual losses to GDOE. See RA, tab 154 at 7 (Finds. Fact & Concl. L. (Restitution)).

[23] Given the record and the trial court's Findings of Facts and Conclusions of Law, we have no firm conviction that the trial court made a clear error of judgment. Nor has Faisao established why these other awards are improper. Therefore, we find that the trial court did not abuse its discretion in awarding the specified amounts for restitution, which were attributable to all victims listed in the plea agreement other than F.B. Leon Guerrero.

D. The Superior Court Did Not Err in Failing to Separately Determine Faisao's Ability to Pay Restitution Under 9 GCA § 80.52(d)

[24] Faisao also argues that the restitution award constitutes an illegal sentence because the court did not make a finding as to Faisao's or his co-defendants' ability to pay, jointly or severally, the restitution amount of \$173,440.29. Appellant's Br. at 23-24. He contends that under 9 GCA § 80.52(d), the trial court was required to determine the defendants' ability to pay before ordering any restitution. *Id.*

[25] In *Mallo*, we determined that when a defendant stipulates to the payment of restitution as part of his or her plea agreement, that defendant waives his or her right to a hearing to determine financial ability to pay the restitution amount under 9 GCA § 80.52. See 2008 Guam 23 ¶ 54. The *Mallo* defendant had stipulated to pay the entire costs of the victim's funeral and other related expenses and, if given a fair opportunity to pay, he could do so. *Id.* ¶ 51. By the time the defendant entered into the plea agreement, the expenses had already been incurred, negotiated,

and incorporated into the plea agreement. *Id.* ¶ 52. In addition, the defendant did not object to the amount of the funeral costs. *Id.* ¶ 53.

[26] Faisao admits his plea agreement is similarly worded but contends that he is differently situated from the defendant in *Mallo*. Appellant’s Reply Br. at 9-10 (Jan. 9, 2018). Unlike in *Mallo*, the \$173,440.29 restitution amount had not been incorporated into Faisao’s plea agreement. RA, tab 119 (Plea Agreement). Faisao also argues that because the trial court held a restitution hearing to determine the amount of restitution, the court was required by 9 GCA § 80.52(d) to determine whether or not Faisao had the ability to pay the amount ordered. Appellant’s Reply Br. at 10. Faisao, however, cites no authority supporting the proposition that a trial court’s decision to hold a restitution hearing automatically triggers a duty under section 80.52(d) to consider a defendant’s ability to pay. *See id.*

[27] The plain language of Faisao’s plea agreement, and our decision in *Mallo*, are clear. In his plea agreement, Faisao agreed to pay restitution in monthly installments, as set by the Parole Services Division, to the named victims. RA, tab 119 at 4 (Plea Agreement). In addition, Faisao agreed “that if given fair opportunity to pay any ~~fin~~es and restitution ordered by the Court, he will be able to do so.” *Id.* at 6 (strikethrough handwritten in original). He also acknowledged that the restitution payments would survive even after the end of his parole. *Id.* at 4.

[28] Based on the plain language of the plea agreement, Faisao agreed that, as a condition of his plea, he would pay restitution to the victims and make payments if given a fair opportunity to do so. “A stipulation, by its very nature, indicates that no factual dispute exists, and therefore no evidentiary hearing is required.” *Mallo*, 2008 Guam 23 ¶ 54. A defendant who stipulates that he has the ability to pay restitution waives his right to a hearing regarding his means to pay the

restitution ordered. *Id.* Faisao was given the opportunity to consider these conditions, and he knowingly chose to enter into the written agreement. Therefore, the trial court did not abuse its discretion by not considering whether Faisao had the ability to pay the amount awarded in restitution.

V. CONCLUSION

[29] For the reasons set forth above, we **VACATE** the Addendum to Judgment, dated August 2, 2017. In addition, we **REVERSE** that portion of the Superior Court’s Findings of Facts and Conclusions of Law ordering Faisao to pay restitution to the Guam Department of Education in the amount of \$86,461.03 for losses attributable to F.B. Leon Guerrero Middle School and **REMAND** with instructions to enter a new judgment not inconsistent with this Opinion.

/s/

F. PHILIP CARBULLIDO
Associate Justice

/s/

ROBERT J. TORRES
Associate Justice

/s/

KATHERINE A. MARAMAN
Chief Justice