IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

CLEAVER RECHELLUUL,
Appellant,
v.
REPUBLIC OF PALAU,
Appellee.

Cite as: 2021 Palau 29
Criminal Appeal No. 21-001
Appeal from Traffic Criminal Citation No. 20-0987

Decided: September 23, 2021

Counsel for Appellant ..... Vameline Singeo
Counsel for Appellee ..... Laisani Tabuakuro, Assistant Attorney General

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice
JOHN K. RECHUCHER, Associate Justice
GREGORY DOLIN, Associate Justice

Appeal from the Court of Common Pleas, the Honorable Honora E. Remengesau Rudimch, Senior Judge, presiding.[1]

OPINION[2]

PER CURIAM:

[¶ 1] Cleaver Rechelluul appeals his conviction for failure to yield and negligent driving. *See* 42 PNC §§ 508, 512. We **AFFIRM**.

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[1] On March 12, 2021, Judge Rudimch took the oath of office as an Associate Justice of the Supreme Court and was assigned to the Trial Division thereof. The verdict in this case was entered before Judge Rudimch's elevation.

[2] Appellant's opening brief did not request oral argument, and the Republic of Palau failed to file a timely response brief in this matter. Accordingly, we resolve this matter on the briefs pursuant to ROP R. App. P. 34(a).

BACKGROUND

[¶ 2] On October 26, 2020, Appellant was involved in a two-vehicle collision with one Lenin Louis. The police officer on the scene issued traffic citations to Appellant charging him with violating section 508 ("failure to yield right of way"), section 512 ("negligent driving"), and section 513 ("reckless driving") of Title 42 of the Palau National Code.[3] The officer also charged Mr. Louis with reckless driving.

[¶ 3] Eventually, Mr. Louis pleaded guilty to the charge of reckless driving and admitted to having exceeded the speed limit. Appellant chose to go to trial, following which he was convicted on the failure to yield and the negligent driving charges against him. He now appeals arguing that his conviction cannot be sustained in light of Mr. Louis' guilty plea. According to Appellant, it was Mr. Louis who was the "cause of the collision, but for his act of speeding, the collision would never have occurred." Appellant's Op. Br. at 4.

[¶ 4] The Republic failed to file a responsive brief. Instead, three days after the Republic's brief was due, the Republic filed a belated motion to extend the time to file its brief. In support of the motion the Republic avers that the delay is the result of the attorney assigned to this matter having "several trial commitments before the Trial Division and the Court of Common Pleas," and "need[ing] time to peruse Palauan jurisprudence" in order to properly craft her arguments. Appellee Mot. at 1-2.

STANDARD OF REVIEW

[¶ 5] "We review the Trial Division's findings of fact for clear error and its conclusions of law *de novo*." *Ngirakesiil v. ROP*, 2021 Palau 23 ¶ 12.

[¶ 6] Motions to extend time to file briefs are governed by Rule 26 of the Palau Rules of Appellate Procedure, and when made after the expiration of the

[3] Officer Blailes's citation is for both a violation under 42 PNC § 512 and 42 PNC § 513 but he incorrectly identifies the reckless driving as the former section violation and the negligent driving as the latter section violation. This is a harmless error as both negligent and reckless driving violations were identified even though the statute numbers were inversed. See *Xiao v. ROP*, 2020 Palau 4 ¶¶ 25, 27.

relevant time period may be granted only upon a showing of "excusable neglect." ROP R. App. P. 26(c).

DISCUSSION

I.

[¶ 7] We begin by addressing the Republic's motion for extension of time. Under Rule 26 of the Rules of Appellate Procedure, "[i]f a litigant makes a request after the expiration of the specified time period, the court may permit the filing only where the failure to file was the result of excusable neglect." *Fritz v. Koror State Pub. Lands Auth.*, 17 ROP 294, 297 (2010) (citing ROP R. App. P. 26(c)). "Excusable neglect," in turn, is "more than the normal (or even reasonably foreseeable but abnormal) vicissitudes inherent in the practice of law. . . . The Court prefers to think along the lines of acts of God, like fires, floods, inexplicably inconsistent judgments, hospitalizations, and other such force majeures." *Id.* at 299. Being busy with other cases and needing time to research the law in order to properly argue an appeal are not *force majeures*. Nor is the attorney's failure to follow her own calendar sufficient to satisfy the standard. *See Ngirmeriil v. Ngatpang State Pub. Lands Auth.*, 2020 Palau 31 ¶ 5. Nothing in the Republic's motion explains why it could not have been filed prior to the expiration of the deadline to file the brief so that the Court could adjudicate it under a much more lenient "good cause" standard. *See* ROP R. App. P. 26(c); *Fritz*, 17 ROP at 298-99. Justice and fairness demand that we treat the Government and its motions no more favorably than we would have treated any other litigant. *See Commodity Futures Trading Comm'n v. First Nat. Monetary Corp.*, 565 F. Supp. 30, 33 (N.D. Ill. 1983) ("Government should be held to at least the same standards as private litigants . . . ."). We have previously denied belated motions to file briefs when such motions failed to meet the high "excusable neglect" standard. *See, e.g.*, *Ngirmeriil*, 2020 Palau 31 ¶¶ 5-6; *Fritz*, 17 ROP at 297; *Koror State Gov't v. Aimeliik State Gov't*, Civ. App. No. 20-021 (unpublished) (dismissing the Government's case for failure to file its brief within the allocated timeline). Applying the same standards here, we **DENY** the Republic's motion and proceed to consider the appeal solely on the basis of the Appellant's brief and the record below.

[¶ 8] Fortunately for the Republic, failure to file a responsive appellate brief (in contrast to trial practice in a civil case) does not constitute a concession that the Appellant is correct in his assertions. *Compare* ROP R. App. P. 31(c), *with* ROP R. Civ. P. 7(c)(1). Instead, Appellant, as a party seeking relief from a duly entered judgment, always carries the burden to show that the judgment below was erroneous. *See Beit v. United States*, 260 F.2d 386, 387 (5th Cir. 1958).

II.

[¶ 9] Appellant's only contention is that his negligence was not the cause of a collision because Mr. Louis admitted that it was his recklessness that caused it. The contention, even if it were correct, is a *non sequitur*.

[¶ 10] A conviction under either 42 PNC § 508 or 42 PNC § 512 does not require the Republic to prove there was a collision at all. Instead, a violation under section 508 is made out when the Republic proves that "[t]he driver of a vehicle approaching an intersection [failed to] yield the right-of-way to a vehicle which has entered the intersection." 42 PNC § 508. Whether a collision occurred or was fortuitously avoided is entirely immaterial to the guilt or innocence under this statute. Similarly, in order to make out a violation under section 512, the Republic merely needs to prove that a driver drove "a vehicle upon a highway in such a manner as to constitute a substantial deviation from the standard of care which a reasonable person would exercise in the situation." 42 PNC § 512. Again, no proof of collision is required and a charge could be sustained even if no other cars were present on the roadway. Thus, the question of whether Appellant was or was not a cause of the collision that occurred on October 26, 2020 is simply irrelevant to Appellant's guilt.[4]

[4] Appellant does not challenge any other factual basis underlying the convictions, and our review of the record satisfies us that the Republic proved all the elements of the charged offenses.

CONCLUSION

[¶ 11] Because the argument advanced by Appellant does not call into question his conviction, we **AFFIRM** the judgment of the Court of Common Pleas.[5]

[5] In any event, we doubt that even if the question of the collision's causation were relevant to the outcome of this case, Appellant's argument would carry the day. Though in light of our resolution of the appeal, we need not address this point directly, we have previously held that "the defendant's guilt or innocence does not turn on the negligence of another." *Armaluuk v. ROP*, 9 ROP 55, 56 (2002). As the United States Court of Military Appeals explained, in criminal matters, unlike in civil ones, "the test for causation-in-fact is more accurately worded, not in terms of but-for cause, but rather: Was the defendant's conduct a substantial factor in bringing about the forbidden result?" *United States v. Cooke*, 18 M.J. 152, 154 (C.M.A. 1984) (quoting Wayne Lafave & Austin W. Scott Jr., Handbook on Criminal Law 250 (1972)) (italics omitted).