

Blanco v. ROP, 16 ROP 205 (2009)
RODERICK BLANCO,
Appellant,

v.

REPUBLIC OF PALAU,
Appellee.

CRIMINAL APPEAL NO. 08-004
Criminal Case No. 06-262

Supreme Court, Appellate Division
Republic of Palau

Decided: July 7, 2009¹

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice

Appeal from the Trial Court, LOURDES F. MATERNE, Associate Justice, presiding.

PER CURIAM:

Before the Court is Appellant's challenge to the amount of restitution to which he was sentenced after his conviction for failing to yield the right of way, under 42 PNC § 509. He argues that the trial court erred in sentencing him twice for the same crime, and contends that his rights against double jeopardy under the Constitution of the Republic of Palau were violated. Appellant additionally asserts that the trial court lacked jurisdiction to sentence him after it entered final judgment. Appellee argues that the Court should find that the trial court acted in accordance with ROP Rule of Criminal Procedure 36. For the reasons set forth below, we agree with Appellant and reverse the July 23, 2008, Order of the trial court.

BACKGROUND

The undisputed factual history of this case is as follows. On November 1, 2007, Appellant p.206 pleaded guilty to one count of Failure to Yield Right of Way to Vehicle, was sentenced to twenty hours of community service, and restitution "determined by the Probation Office and later ordered by this court." On December 19, 2007, the Probation Office confirmed that Appellant had completed his community service hours. Probation issued a "Determination of Restitution" on February 5, 2008, stating that, although the office had not received the cost of repairing the victim's motorcycle, "restitution [was] therefore determined at \$112.90 to be paid to the victims." It did not state that further restitution would be ordered, nor did it state that this was not the final restitution amount. The trial court thereafter issued February 12, 2008, Order

¹The parties did not request oral argument and the panel finds this case appropriate for submission without oral argument, pursuant to ROP R. App. P. 34(a).

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setting “full restitution” at \$112.90. The Order did not state that further restitution would be determined, nor that this was not the final judgment on restitution.

One week later, on February 19, 2008, the Probation Office issued a supplementary determination of restitution, adding the cost of the motorcycle repairs and setting restitution at \$12,548.19. Two days later, Appellant filed an objection to the additional restitution, arguing that the case was closed by the February 12, 2008, Order. Appellant requested a hearing and one was held on April 4, 2008. The Court issued an Order on April 8, 2008, stating that the Probation Office shall file receipts and evidence of the new restitution amount, and that Appellant was entitled to object to the new report within one week of its being filed.

The Probation Office issued the evidence and a new report on July 22, 2008. The very next day the trial court signed an Order directing Appellant to pay \$10,147.19 in restitution. This was over five months after the court signed the first order directing Appellant to pay restitution. Thereafter, Appellant filed a motion to vacate the restitution order, which the trial court denied. Appellant filed this timely appeal, arguing that the trial court lacked jurisdiction to order restitution after final judgment and that Appellant’s rights against double jeopardy were violated as a result of being sentenced twice for the same crime.

STANDARD OF REVIEW

The trial court’s conclusions of law are reviewed by this Court *de novo*. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001). Appellee urges the Court to use an abuse of discretion standard of review, relying on a Colorado appellate court opinion and a Second Circuit court of appeals case from the United States. *United States v. Spallone*, 399 F.3d 415 (2d Cir. 2005); *accord People v. Shepard*, 989 P.2d 183, 186 (Colo. App. 1999). However, these cases defer to the trial court only where there is ambiguity in the court’s own restitution orders, on the theory that the trial court is best situated to interpret the ambiguous meaning of its own words. *Id.* As we are not addressing an ambiguous order in the instant matter, we are not bound, nor persuaded, by these cases. Because the errors alleged are legal, we review the trial court’s legal conclusions *de novo*.

DISCUSSION

A. Jurisdiction

Appellant argues that the trial court lacked jurisdiction to enter a second order increasing restitution. He argues that final judgment was entered on February 12, 2008, with the trial court’s order stating that Appellant must “pay the total of \$112.90 restitution to the victims.” This order, Appellant contends, included no provision stating that further restitution would be ordered, and appeared in every respect to be final. Appellant points to a United States statute allowing victims sixty days to petition the court for an amendment in restitution costs after the discovery of new losses,² and argues that because Palau has no analogous statute, victims do not

²18 U.S.C. § 3664(d)(5)(stating that “if the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution

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have the same rights here. Moreover, he asserts that neither ROP R.Crim.P. 35 (“Correction of Reduction of Sentence”) nor Rule 36 (“Clerical Mistake”) permit the modification of a restitution order more than five months after the original order. Relying on case law in the Ninth Circuit Court of Appeals, Appellant argues that trial courts in Palau lack jurisdiction to modify a sentence imposed after the allotted time frame in Rule 35. See *United States v. Penna*, 319 F.3d 509 (9th Cir. 2003) (holding that Rule 35 is a jurisdictional requirement and that any sentence imposed outside of the seven-day deadline for court action is without jurisdiction).

Appellee disputes that Appellant is entitled to relief, and urges the Court to find that the trial court acted in accordance with Rule 36 in simply clarifying a clerical mistake. Appellee contends that the trial court’s February 12, 2008, Order contained an ambiguity, in that it adopted an incomplete Determination of Restitution from the Probation Office. Therefore, the trial court was permitted to clarify its prior ambiguity at any time, and did so in its May 8, 2008, and July 23, 2008, Orders.

We agree with Appellant, and hold that the trial court lacked jurisdiction to enter its modification of restitution order five and a half months after the original order was entered. Rule 35 states that “[t]he court, acting within seven (7) days after the imposition of sentence, may correct a sentence that was imposed as a result of arithmetical, technical, or other clear error.” Under Rule 35, the trial court did not have unlimited authority to modify its previous sentence. Because the trial court modified the sentence not seven days, but five months later on July 23, 2008, it lacked the jurisdiction under Rule 35 to do so.

Likewise, Rule 36 does not apply to the current matter. Rule 36 states that “[c]lerical mistakes in judgments, orders, or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time after such notice, if any, as the court orders.” Clerical mistakes pursuant to Rule 36 have been discussed in this jurisdiction as follows:

Such clerical errors as may be corrected under [Trust Territory Rule of Criminal Procedure 15(e), modeled after United States Rule of Criminal Procedure 36] procedure are to be distinguished from judicial errors which may not be corrected by such amendments. The test in determining whether the error is clerical or judicial is whether the error was made in rendering judgment or in recording judgment.

Trust Territory v. Palacios, 7 TTR 406, 411 (1976) (citing *Blankenship v. Royalty Holding Co.*, 202 F.2d 77, 79 (10 Cir. 1953).

The trial court’s February 12, 2008, Order did not contain a “clerical mistake,” as defined in this jurisdiction, but rather a judicial error in prematurely rendering judgment with respect to restitution. While the original Determination of Restitution should also have stated that further restitution remained to be calculated, it is the trial court’s responsibility to render a fair judgment,

order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief”).

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not the Probation Office. After reading the original Determination, the trial court could have waited to render its Order until full restitution was determined, or alternatively indicated in its order that restitution was only partial. The trial court cannot simply render what appears to be a final judgment, of “full restitution,” and then subsequently modify it at will. The trial court was without jurisdiction to modify its final judgment in its July 23, 2008, Order. We hold, therefore, that the Order must be reversed.

B. Double Jeopardy

Appellant next argues that his rights to double jeopardy were violated by the subsequent modification of his restitution damages. Appellant argues that restitution is a form of sentencing, and that one prong of this Court’s interpretation of the double jeopardy clause protects defendants from being punished more than once for the same offense. He posits that once a sentence has been rendered, including restitution, and the defendant has begun serving that sentence, restitution cannot later be increased without violating the double jeopardy clause of the Constitution.

Because we hold that the trial court lacked jurisdiction to increase Appellant’s sentence, and reverse on that ground, we need not reach Appellant’s constitutional inquiry. This Court has stated that “[c]ourts should avoid unnecessarily addressing and deciding constitutional issues.” *ROP v. Tmetuchl*, 1 ROP Intrm. 443, 511 (1988). This policy is based on the long-standing doctrine followed in the United States, that “[p]rior to reaching any constitutional questions, federal courts must consider nonconstitutional grounds for decision.” *Jean v. Nelson*, 472 U.S. 852, 854 (1985). In *Jean*, the United States Supreme Court stated that “‘if there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable.’” *Id.* (citing *Spector Motor Co. V. McLaughlin*, 323 U.S. 101, 105 (1944)). Therefore, there is no need for us to reach the issue of double jeopardy, as Appellant has been granted relief on non-constitutional grounds.

CONCLUSION

We hold that the trial court lacked **p.209** jurisdiction to increase restitution against Appellant and **REVERSE** its Order of July 23, 2008. The trial court shall retain limited jurisdiction to oversee that Appellant completes payment of the restitution ordered on February 12, 2008, to the extent that restitution has not yet been paid.