

JEROME YOSHIDA BLESOCH,
Appellant,

v.

REPUBLIC OF PALAU,
Appellee.

CRIMINAL APPEAL NO. 09-003
Criminal Citation Case No. 08-082

Supreme Court, Appellate Division
Republic of Palau

Decided: May 21, 2010

[1] **United States:** Precedential Value of United States Law

Without guidance by Palauan law, the Court may refer to United States common law principles concerning probation and sentencing.

[2] **Criminal Law:** Probation

Probation is a court-imposed criminal sentence that, subject to stated conditions, releases a convicted person into the community instead of sending him to prison. It is remedial in nature; it seeks to rehabilitate defendants deemed receptive to supervision and guidance and, although still punishment, has been described as a matter of grace, a conditional liberty, or a favor, rather than a right.

[3] **Criminal Law:** Probation

Whether to order probation is within the trial court's sound discretion.

[4] **Criminal Law:** Probation

The general rule is that, upon revocation of probation, the sentencing court may execute the entire sentence that it originally imposed and suspended. The period of probation is not tied to or intertwined with the potential prison sentence, and while a person remains at large on probation, the suspended portion of the sentence remains in full.

[5] **Criminal Law:** Probation

When a court is considering a sentence after revocation, it need not credit the defendant for time spent on probation. Probation and a prison sentence are two separate components of the punishment for the convicted offenses, and the trial court, upon revocation, has the discretion to impose the entire suspended prison sentence or any lesser term.

[6] **Criminal Law:** Probation; **Criminal Law:** Double Jeopardy

Because probation and imprisonment are distinct parts of a single punishment, the execution of a suspended sentence upon revocation does not violate the double jeopardy clause. Executing a suspended sentence after revoking probation is merely the second part of the original punishment.

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Counsel for Appellee: Office of the Attorney General

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LOURDES F. MATERNE, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice.

Appeal from the Supreme Court, Trial Division, Honorable KATHLEEN M. SALII, Associate Justice, presiding.

PER CURIAM:

Jerome Blesoch appeals the trial court's order revoking his probation and requiring him to spend one year in the Koror Jail for convictions that occurred in 2008. He claims that the court improperly increased his original sentence beyond its fixed term and therefore violated his constitutional right to be free from double jeopardy. *See* ROP Const. art. IV, § 6. This Court finds no error in the trial court's order and upholds Blesoch's sentence.

BACKGROUND

On May 28, 2008, the Republic charged Blesoch with three counts of trafficking in a controlled substance and one count of possession of the same. *See* 34 PNC §§ 3301, 3302. Blesoch pled guilty to two of the trafficking counts.¹ On August 12, 2008, the trial court accepted his plea agreement, imposed a three-year prison sentence, suspended the entire sentence, and placed Blesoch on probation for three years.

After one successful year of probation, Blesoch again ran into legal trouble. He pled guilty to grand larceny, accessory after the fact to burglary, aiding and abetting burglary, driving under the influence, and reckless

¹ These convictions occurred in Criminal Case No. 08-082, which the Court will refer to as the "2008 convictions."

driving.² On August 28, 2009, the trial court sentenced him to five years in prison on these counts, suspended the final three years, and ordered probation for that period.

Blesoch's 2009 offenses constituted violations of the terms of his 2008 probation. The trial court ordered a revocation hearing for October 14, 2009,³ after which it revoked Blesoch's probation and ordered him to serve one year of his suspended three-year prison sentence, to run consecutive to the two-years' imprisonment for his 2009 convictions. Blesoch opposed this sentence on double jeopardy grounds, arguing that the additional year in prison, when added to the two-year sentence for his 2009 convictions, resulted in greater punishment than the original three-year sentence imposed in 2008. The trial court disagreed, and Blesoch now appeals.

ANALYSIS

Blesoch repeats on appeal his argument below: that the revocation order executing one year of his three-year sentence for the 2008 convictions violated the Constitution's double jeopardy clause. Blesoch asserts that all punishment for his 2008 offense—whether probation or jail time—must conclude within three years of the date of the original sentence, that is, by

² These convictions occurred in Criminal Case Nos. 09-028, 09-031, 09-066, 09-141, and 09-144, which the Court will refer to as the "2009 convictions."

³ Although a probation revocation proceeding commonly is initiated by the probation office or a prosecutor, the trial court is authorized to do so on its own motion. ROP R. Crim. P. 32.1(a).

August 12, 2011. The trial court's order, however, requires his imprisonment for those convictions to occur until at least August 28, 2012.⁴ Phrased a different way, Blesoch is arguing that he should receive credit against his original three-year prison sentence for time spent on probation, such that the court cannot impose a prison sentence that would, when added to his probation, exceed a *total* of three years. Blesoch's appeal raises questions of law, which we review *de novo*. *Isechal v. Republic of Palau*, 15 ROP 78, 79 (2008). The Court concludes that Blesoch's position is incorrect and reflects a misunderstanding of the mechanics of probation and of sentencing generally.

[1] The Court begins with Palau's sentencing framework before moving to the constitutional issue of double jeopardy. Rule 32.1 of the Rules of Criminal Procedure outlines the process for revoking or modifying probation but does not address an appropriate sentence upon revocation. The legislature has spoken on this issue, granting a trial court the authority, upon revoking probation due to violation of its terms, to "impose any sentence which may have initially been imposed had the court not suspended imposition of sentence in the first instance." *Id.* § 3110(c). This is the only guidance provided by Palauan law, and the Court finds no cases discussing the provisions in detail. Accordingly, the Court refers to United States common law principles concerning probation and

sentencing. *See* 1 PNC § 303; *Becheserrak v. Republic of Palau*, 7 ROP Intrm. 111, 114 (1998).

[2,3] Probation is "a court-imposed criminal sentence that, subject to stated conditions, releases a convicted person into the community instead of sending the criminal to jail or prison." 21A Am. Jur. 2d *Criminal Law* § 844 (2008). Probation is remedial in nature; it seeks to rehabilitate those defendants deemed receptive to supervision and guidance and, although still a form of punishment, has been described as "a matter of grace," a "conditional liberty," or a "favor," rather than a right. *Id.*; *see also Thomas v. United States*, 327 F.2d 795, 797 (10th Cir. 1964). Probation is a means for the defendant to avoid a prison term that the court otherwise would have imposed. Accordingly, whether to order probation is within the trial court's sound discretion. *See* 17 PNC § 3110(a) (granting court discretion to impose probation "when satisfied that the ends of justice and the best interests of the public as well as the defendant will be served"); *see also* ROP R. Crim. P. 32.

[4] The general rule is that, upon revocation of probation, the sentencing court may execute the entire sentence that it originally imposed and suspended. *Roberts v. United States*, 320 U.S. 264, 265 (1943); *United States v. Berry*, 814 F.2d 1406, 1410 (9th Cir. 1987); *United States v. Briones-Garza*, 680 F.2d 417, 423 (5th Cir. 1982); *Thomas*, 327 F.2d at 797. The period of probation is not tied to or intertwined with the potential prison sentence, *see* 3 Charles Alan Wright, et al., *Federal Practice and Procedure: Criminal* § 529 (3d ed. 2004), and "while a person remains at large on probation, the suspended portion of the sentence remains

⁴ Blesoch will serve at least two years for his 2009 convictions, which began on August 28, 2009. When that term is over on August 28, 2011, Blesoch will then serve his one-year sentence for his 2008 convictions, which will end on August 28, 2012.

in full,” 21A Am. Jur. 2d *Criminal Law* § 844. Where a court imposes a fixed prison sentence at the defendant’s initial sentencing,⁵ it “hangs over him” as an incentive to comply with the terms of probation, and he is aware that he will be subject to that sentence if he violates them. *Roberts*, 320 U.S. at 268; *see also Briones-Garza*, 680 F.2d at 423.

[5] According to these general principles, when a court is considering a sentence after revocation, it need not credit the defendant for time spent on probation. *Won Cho*, 730 F.2d at 1265; *Briones-Garza*, 680 F.2d at 423; *Baber*, 368 F.2d at 465; *Thomas*, 327 F.2d at 797; *see also* 3 Wright, et al., *supra*, § 542. Probation and a prison sentence are two separate components of the punishment for the convicted offenses, and the trial court, upon revocation, has the discretion to impose the

entire suspended prison sentence or any lesser term. *Roberts*, 320 U.S. at 265; *Thomas*, 327 F.2d at 797; *State v. Mapp*, 984 A.2d 108 (Conn. App. Ct. 2009); *Wilkerson v. State*, 918 N.E.2d 458 (Ind. Ct. App. 2009); *McDonald v. State*, 16 So. 3d 83 (Miss. Ct. App. 2009); *State v. Harrington*, 218 P.3d 5 (Idaho Ct. App. 2009).

[6] Because probation and imprisonment are distinct parts of a single punishment, the execution of a suspended sentence upon revocation does not violate the double jeopardy clause. The Palau Constitution ensures that “[n]o person shall be placed in double jeopardy for the same offense.” ROP Const. art. IV, § 6. This clause not only protects against a second prosecution for the same offense after acquittal or conviction, but also against multiple punishments for the same offense. *See Scott v. Republic of Palau*, 10 ROP 92, 96 (2003); *Kazuo v. Republic of Palau*, 3 ROP Intrm. 343, 346 (1993); *see also North Carolina v. Pearce*, 395 U.S. 711, 717 (1969). Executing a suspended sentence after revoking probation, however, is merely the second part of the original punishment. It is a consequence that the defendant knew would be coming if he did not comply with the terms of probation. *See, e.g., United States v. Pettus*, 303 F.3d 480, 487 (2d Cir. 2002). In essence, the probation—and the defendant’s freedom—is the carrot, whereas the suspended sentence is the stick; they are alternative portions of a single punishment. As Justice Frankfurter once commented, “to set a man at large after conviction on condition of his good behavior and on default of such condition to incarcerate him, is neither to try him twice nor to punish him twice.” *Roberts*, 320 U.S. at 276-77 (Frankfurter, J., dissenting). Therefore, “there is no double jeopardy

⁵ A trial court also has the option to suspend the *imposition* of a sentence, not just its execution. *See* 17 PNC § 3110; *Roberts*, 320 U.S. at 267-68; 21A Am. Jur. 2d *Criminal Law* §§ 841, 843 (comparing suspension of the imposition and execution of a sentence); 3 Wright, et al., *supra*, § 529. In this situation, at the original sentencing, the court imposes the term of probation but does not impose a fixed sentence in the event of revocation. Therefore, the defendant is unaware initially of the precise prison term that will be imposed if he violates his probation, and “[u]pon revocation of the probation, the court may then impose any sentence which may have initially been imposed had the court not suspended imposition of sentence in the first instance.” 17 PNC § 3110; *see also Roberts*, 320 U.S. at 268; *United States v. Won Cho*, 730 F.2d 1260, 1265 (9th Cir. 1984); *Baber v. United States*, 368 F.2d 463, 465 (5th Cir. 1966). In Blesoch’s case, however, the trial court expressly imposed a three-year prison sentence but suspended its execution, and we therefore limit the discussion accordingly.

protection against revocation of probation and the imposition of imprisonment.” *United States v. DiFrancesco*, 449 U.S. 117 (1980); *see also Roberts*, 320 U.S. at 267-68; *Thomas*, 397 F.2d at 797.

Applying these principles to Blesoch’s appeal, the Court finds no error below. The trial court initially imposed a three-year prison sentence, but suspended it to afford Blesoch the opportunity to avoid jail time if he complied with the terms of probation. He failed to do so. The trial court therefore possessed the discretion to execute his entire original sentence, which remained suspended *in full* during Blesoch’s probationary period. To Blesoch’s benefit, the trial court only executed one year of the three-year sentence. Requiring this punishment to be served consecutively with his sentence for the 2009 convictions was also within the trial court’s discretion, *see Kazuo*, 3 ROP Intrm. at 344 (holding that a trial court has discretion to determine whether a sentence in a criminal case should run consecutively with another sentence in a separate criminal case), nor does it run afoul of the double jeopardy clause because the two prison terms are for two wholly separate offenses. The court’s order did not implicate the double jeopardy clause.

CONCLUSION

For the foregoing reasons, we AFFIRM.