

IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellant,

vs.

EMERITO C. NATIVIDAD,
Defendant-Appellee,

Supreme Court Case No. CRA05-002
Superior Court Case No. CF0094-02

OPINION

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Appeal from the Superior Court of Guam
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; FRANCES M. TYDINGCO-GATEWOOD, Associate Justice; ROBERT J. TORRES, JR., Associate Justice.

TORRES, J.:

[1] Plaintiff-Appellant People of Guam appeal from a Superior Court Judgment of Acquittal, issued after a jury returned a guilty verdict, in this criminal action. Defendant-Appellee Emerito C. Natividad filed a Motion to Dismiss, arguing that this court lacks appellate jurisdiction to hear the appeal. He

challenges the People's reliance on Title 8 GCA § 130.20(a)(3) in this case, and cites this court's decision in *People v. Lujan*, 1998 Guam 28, that recognized statutory limitations to appellate jurisdiction. The People opposed the motion, arguing, *inter alia*, that the reinstatement of the jury's guilty verdict does not violate Double Jeopardy concerns. We hold, in accordance with our prior decisions, that the statutes governing appellate jurisdiction are to be strictly construed, and that Guam law does not allow the People to appeal from the trial court's grant of a Motion for Acquittal after a jury's guilty verdict. Therefore, this appeal is dismissed. 🗨️

I.

[2] In 2002, Emerito C. Natividad was indicted in the Superior Court with vehicular homicide and criminal negligent homicide. The charges arose from Natividad's operation of a vehicle that had pinned a two-year-old child against the wall of UR Market in Dededo, which resulted in the child's death. In 2005, the case proceeded to a jury trial, where Natividad rested his case in chief without presenting any evidence. At the close of all evidence, Natividad moved for a judgment of acquittal, arguing that the evidence presented by the People of Guam was insufficient as a matter of law. The trial court ruled from the bench and granted the acquittal on the negligent homicide charge, but reserved its ruling with respect to the vehicular homicide charge. The vehicular homicide charge went to the jury, which returned a guilty verdict that same day.

[3] Thereafter, the trial court granted Natividad's motion for judgment of acquittal on the vehicular homicide charge in a Decision and Order, holding that based on the evidence presented, no reasonable trier of fact could have found the essential elements of the vehicular homicide charge. A Judgment of Acquittal was entered on the Superior Court docket. The People timely filed a Notice of Appeal. Natividad in turn filed the instant Motion to Dismiss.

II.

[4] Natividad argues generally that this court may exercise appellate jurisdiction only pursuant to express statutory authority, and argues specifically that the People erroneously rely on Title 8 GCA § 130.20(a)(3) because there is no "order after judgment" as required by the statute. He maintains that our holding in *Lujan*, 1998 Guam 28, recognizes statutory limits to our jurisdiction.


[5] The People make the following counter arguments: (1) the underlying purpose of a statute such as Title 8 GCA § 130.20(a)(3) is to prevent Double Jeopardy to a defendant, and federal courts have held that reversing a trial court's grant of motion for acquittal and reinstating a jury's guilty verdict does not offend the prohibition against Double Jeopardy; (2) because the People could have made a motion for reconsideration, the trial court could have reinstated the jury's guilty verdict or affirmed its decision to grant the motion of acquittal which the People could then appeal; and (3) this court is not bound by dicta from Ninth Circuit cases. Alternatively, the People submit that this court may review the case as an appeal pursuant to Title 8 GCA § 130.20(a)(1) (allowing appeals from orders granting a new trial) or as a petition for an extraordinary writ.


A. Title 8 GCA § 130.20

[6] The starting point for our analysis of whether this court has appellate jurisdiction must begin with the statute setting forth the instances when the government may file an appeal. Title 8 GCA § 130.20 (2005) provides the bases for appeals by the People:

Appeals Allowed by Government. (a) An appeal may be taken by the government from any of the following:

- (1) An order granting a new trial.
- (2) An order arresting judgment.
- (3) An order made after judgment, affecting the substantial rights of the government.
- (4) An order modifying the verdict on finding by reducing the degree of the offense or the punishment imposed.
- (5) An order or judgment dismissing or otherwise terminating the action before the defendant has been placed in jeopardy or where the defendant has waived jeopardy.
- (6) An order granting a motion to suppress evidence. . . .


The People may not appeal pursuant to subsection (1), because the trial court did not grant a new trial. 

Appeal is not allowed under subsection (2), because Natividad did not make a motion for arrest of judgment pursuant to Title 8 GCA § 115.10. The trial court, in granting Natividad's motion for acquittal, did not modify the jury's verdict "by reducing the degree of the offense or the punishment imposed" and therefore, there is no jurisdiction pursuant to subsection (4). The People may not rely on subsection (5), because there is no "order or judgment dismissing or otherwise terminating the action before the defendant has been placed in jeopardy or where the defendant has waived jeopardy." 


Finally, jurisdiction is not proper pursuant to subsection (6) because this case does not involve a motion to suppress evidence.

[7] The People base this appeal on subsection (3), presumably arguing that the Decision and Order is an "order after judgment." See 8 GCA § 130.20(a)(3). This argument is not persuasive. The People appeal from both the Decision and Order and the Judgment of Acquittal. Neither document can be interpreted as an "order after judgment." The Decision and Order was issued *before* the Judgment of Acquittal. The Judgment of Acquittal is the judgment in the case; there was no order or judgment issued *after* it. In addition, a verdict is defined as "[t]he formal decision or finding made by a jury." Black's Law Dictionary 1559 (6th ed. 1990). A "judgment," on the other hand, is pronounced by the court or a judge. See Black's Law Dictionary 841-42 (6th ed. 1990). These words are terms of art and are not interchangeable.

[8] *People v. Ulloa*, 903 F.2d 1283 (9th Cir. 1990), involved nearly identical facts, where the jury had returned a guilty verdict and the trial court granted the defendant's motion for acquittal. Upon the People's appeal, the District Court Appellate Division reversed and reinstated the guilty verdict. *Id.* at 1283-84. The Ninth Circuit then reversed the Appellate Division, holding that Title 8 GCA § 130.20 did not allow an appeal from the trial court's grant of a motion for acquittal. *Id.* at 1286. Although the People in *Ulloa* did not argue that the appeal was from an "order after judgment" pursuant to 8 GCA § 130.20(a)(3), the Ninth Circuit nonetheless evaluated all the statutory grounds for jurisdiction set forth in 8 GCA § 130.20, and concluded that there was no statutory basis for the appeal. *Id.* at 1285 n.7. Specifically, it found that "a judgment of acquittal is simply not an order made after judgment; it is a judgment." *Id.* In the case herein, the Decision and Order was issued *before* the judgment. The Judgment of Acquittal is not an order after judgment.

[9] The People submit that the rationale for 8 GCA § 130.20(a)(3) is to prevent Double Jeopardy violations, and jurisdiction is proper because a successful appeal would not violate Double Jeopardy, but rather, would only reinstate the jury's guilty verdict. The People urge that interpreting 8 GCA § 130.20(a)(3) "in concert with federal or California law" grants this court's jurisdiction over the instant appeal. Opp'n to Def.-Appellee's Mot. to Dismiss for Want of Jurisdiction. The People further urge this court to look to federal and California interpretations, because according to the Compiler's Notes, Chapter 130 of the GCA "conformed generally to their federal or California counterparts." Note, 8 GCA § 130.10. 

1. Federal law

[10] The People cite 18 U.S.C. § 3731 (Westlaw through P.L. 109-127 (2005)), which requires a consideration of Double Jeopardy and states in relevant part: "In a criminal case an appeal by the United States shall lie . . . from a decision, judgment, or order . . . dismissing an indictment or information or granting a new trial . . . except that no appeal shall lie where the double jeopardy clause . . . prohibits further prosecution." Furthermore, the United States Supreme Court has interpreted this statute as exhibiting Congress' intent "to broaden the Government's appeal rights. . . . [L]egislative history makes it clear that Congress intended to remove all statutory barriers to Government appeals and to allow appeals whenever the Constitution would permit." *United States v. Wilson*, 420 U.S. 332, 337 (1975). The general rule in the federal circuits, as the People recognize, allows an appeal from a trial court's grant of a motion of acquittal after a jury's guilty verdict. See e.g., *United States v. Horwitz*, 622 F.2d 1101 (2d Cir. 1980); *United States v. Uzzolino*, 651 F.2d 207 (3d Cir. 1981); *United States v. McClinnis*, 601 F.2d 1319 (5th Cir. 1979); *United States v. Blasco*, 581 F.2d 681 (7th Cir. 1978); *United States v. Moore*, 586 F.2d 1029 (4th Cir. 1978); *United States v. Rojas*, 554 F.2d 938 (9th Cir. 1977); *United States v. Donahue*, 539 F.2d 1131 (8th Cir. 1976). These cases, however, are based on federal law reflecting Congress' intent to allow the government to appeal, and are therefore inapposite. 

[11] Congress also enacted 48 U.S.C. § 1493 in 1984, allowing territorial governments to seek review or relief in an appellate court in certain instances. This provision states in its entirety:

The prosecution in a territory or Commonwealth is authorized--unless precluded by local law--to seek review or other suitable relief in the appropriate local or Federal appellate court, or, where applicable, in the Supreme Court of the United States from—


(a) a decision, judgment, or order of a trial court dismissing an indictment or information as to any one or more counts, except that no

review shall lie where the constitutional prohibition against double jeopardy would further prosecution;

(b) a decision or order of a trial court suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the prosecution certifies to the trial court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding; and

(c) an adverse decision, judgment, or order of an appellate court.


48 U.S.C. § 1493 (Westlaw through P.L. 109-127 (2005)) (emphases added.). Even pursuant to this federal statute, the People are foreclosed from appealing this case, as the People do not appeal from a “a decision, judgment, or order of a trial court dismissing an indictment or information as to any one or more counts” pursuant to subsection (a), or “a decision or order of a trial court suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding” pursuant to subsection (b). *Id.* Therefore, the People do not satisfy either basis for jurisdiction under 48 U.S.C. § 1493 under either subsection (a) or (b).

[12] We are not persuaded by the People’s argument to rely on federal statutes or precedent. Unlike the congressional intent to broaden the government’s appeal rights, Guam’s legislative history does not reflect an intent by the Legislature to expand the People’s right to appeal. In fact, this court has recognized that “section 130.20 is a jurisdictional statute which will be strictly construed.” *People v. Superior Court (Bruneman)*, 1998 Guam 24 ¶ 9. While Guam law does not expressly preclude an appeal from a trial court’s grant of a Motion for Acquittal, Title 8 GCA § 130.20 contains the bases for the People to appeal, and this provision does not include an appeal from a trial court’s grant of a Motion for Acquittal. Moreover, no other statute allows the People to appeal from such a decision. Therefore, the People may not appeal here because there is no statutory authority to support an appeal. Accepting the People’s contrary interpretation would result in a liberal construction of the statute, and would run contrary to this court’s prior statement in *Bruneman*. Our result here is underscored by *Lujan*, 1998 Guam 28, where we addressed this same issue and emphasized the rule of strict construction: 

Despite statutory provisions expressing a broad grant of jurisdiction, see 7 GCA §§ 3107 and 3108 (1994), where other statutory provisions contain specific limitations on the ability of a party to pursue appellate relief, we must respect those restrictions. . . . *Regardless of our broad jurisdiction, we will not consider an issue which a party is statutorily not permitted to advance.*


Id. ¶ 9 (emphasis added). Comparing this court’s statement in *Lujan* to the Supreme Court’s recognition in *Wilson* of Congress’ intent to broaden the federal government’s right to appeal reveals that the reasoning in the federal cases cannot be applied to Guam. *Cf. State ex rel Yates*, 512 N.E. 2d 343, 345-46 (Ohio 1987) (“hold[ing] that a judgment of acquittal by a trial judge . . . is a final verdict within the meaning of [state law] and is not appealable by the state as a matter of right or by leave to appeal pursuant to a statute.”).

2. California law

[13] The People cite two California statutes as impliedly allowing this appeal, and argue that because California Penal Code §§ 1118.1 and 1118.2 prohibit the government from appealing a motion for judgment of acquittal before the jury verdict, then impliedly, the government may appeal a motion after the jury verdict. 

The People fail to cite any authority, other than its interpretation of these statutes, and we find the reliance on these statutes is misplaced.

[14] In fact, one California appellate court’s interpretation of these provisions directly undercuts the People’s argument. In *People v. Witt*, 125 Cal. Rptr. 653, 659 (Ct. App. 1975), the court stated: “A motion made pursuant to Penal Code section 1118.1 is an evidentiary motion going to the sufficiency of the evidence to sustain a conviction of the offense charged, and, if granted, operates as a judgment on the merits.” Therefore, even if the People’s argument were accepted and the motion for a judgment of acquittal may be appealed prior to the jury verdict, the trial court’s grant of the motion in this case is a “judgment on the merits” and therefore, there is no order “after” the judgment that would allow an appeal pursuant to 8 GCA § 130.20(a)(3).

[15] We instead believe it is more rational to look at California Penal Code § 1238, which is the source of 8 GCA 130.20. 

Even assuming *arguendo* that we adopt the argument that Double Jeopardy is not implicated because reversal on appeal would simply reinstate the prior jury

verdict, 8 GCA § 130.20(a)(5) still does not bestow us with jurisdiction. An examination of California’s legislative history concerning Penal Code § 1238 makes this abundantly clear. 🗨️

[16] Prior to 1998, California Penal Code § 1238(a)(8) was identical to Guam’s 8 GCA § 130.20(a)(5). In 1998 California amended certain portions of section 1238, and legislative history reveals that drafters believed that the amendments would:

Allow[] the People to appeal from an order setting aside only a portion of the charging document, *as well as an order or judgment after a verdict of guilty or finding of guilty*. Specifically, th[e] bill provides the People may appeal from:

...

3) An order or judgment dismissing or otherwise terminating all or any portion of the action including such an order or judgment after a verdict or finding of guilty

Calif. Assembly Comm. on Public Safety, SB 1850 Bill Analysis, Hr’g May 12, 1998 (available at <http://www.leginfo.ca.gov>) (emphasis added). The California Assembly acknowledged that the version of section 1238, prior to the suggested amendments, did not allow for the People to appeal from an order or judgment dismissing the case after the jury had returned a guilty verdict. Calif. Assembly Comm. on Public Safety, SB 1850 Bill Analysis, Hr’g May 12, 1998. The California Senate also noted the limitation, stating that “the prosecution cannot currently appeal from the dismissal of a charge after a guilty verdict.” Calif. Senate Comm. on Public Safety, SB 1850 Bill Analysis, Hr’g April 14, 1998 (available at <http://www.leginfo.ca.gov>). Both committees envisioned that the amendment constituted an expansion of the People’s right to appeal. Consequently, the legislators amended California Penal Code § 1238(a)(8) to specify that appeals would be allowed from “such an order or judgment after a verdict or finding of guilty or an order or judgment entered before the defendant has been placed in jeopardy or where the defendant has waived jeopardy.” Cal. Penal Code § 1238(a)(8).

[17] The expansion of the government’s right to appeal was recognized in *People v. Salgado*, 105 Cal. Rptr. 2d 373 (Ct. App. 2001), where, in facts somewhat similar to the case herein, a jury returned a guilty verdict on charges of carjacking and assault with a firearm. After the verdict, the trial court questioned the sufficiency of the evidence on the carjacking charge, granted its own motion for a new trial on that count, and immediately dismissed the charge. The People appealed. The appellate court acknowledged that “[p]rior to 1998, section 1238, subdivision (a)(8) did not permit appeals after a defendant had been placed in jeopardy unless there was an express or implied waiver of jeopardy.” *Id.* at 379. Because of the amendment in 1998, the court concluded, *inter alia*, that the People could appeal pursuant to § 1238(a)(8) because the trial court’s dismissal “occurred after a guilty verdict, [and thus] there is now express statutory authority for the People’s appeal of the dismissal of the carjacking count.” *Id.* The rationale was that a successful appeal would not place the defendant in jeopardy, because the result would only reinstate the jury’s guilty verdict.

[18] Unlike California, the Guam Legislature has not amended 8 GCA § 130.20. We are guided, then, by the pre-1998 version of California Penal Code § 1238(a)(8). As discussed above, the California drafters and courts have interpreted the pre-1998 version as denying the People from appealing. See *Salgado*, 105 Cal. Rptr. 2d 373. Unless and until the Guam Legislature amends 8 GCA § 130.20, this provision does not allow the People to appeal from a trial court’s grant of a Motion for Acquittal after a jury’s guilty verdict.

[19] Moreover, this court has interpreted jurisdiction narrowly. *Lujan*, 1998 Guam 28 ¶ 9 (“[W]here other statutory provisions contain specific limitations on the ability of a party to pursue appellate relief, we must respect those restrictions.”); *Bruneman*, 1998 Guam 24 ¶ 9 (“[S]ection 130.20 is a jurisdictional statute which will be strictly construed.”).


[20] Based on these reasons, we hold that there is no statutory authority for the People to bring the instant appeal.

B. Motion for Reconsideration

[21] The People next argue that it should be allowed to appeal the Judgment of Acquittal, because during proceedings below, the People would have been allowed to appeal from the trial court’s decision on a Motion for Reconsideration. The People argue it would be an unreasonable result if we were allowed to review a judgment of acquittal after an order is made in a Motion for Reconsideration, but foreclosed from ever ruling on a judgment of acquittal in the absence of such a motion. The People further argue that it would be unreasonable if the People were required to “perform busywork filing motions for reconsideration that are not going to be granted.” Opp’n to Def-Apellee’s Mot. to Dismiss for Want of Jurisdiction, p. 6.

[22] The People cite no authority to support this argument, relying instead on cases holding that a trial court may reconsider its rulings; however, it is undisputed that the trial court may reconsider its rulings. In the overall picture, it may make sense that this court should be allowed to rule on a trial court action. It is undeniable, nevertheless, that jurisdiction may be exercised only as allowed by statute. “We have consistently held that this court’s appellate jurisdiction is limited to those matters which the legislature permits us to review.” [Lujan](#), 1998 Guam 28 ¶ 8. In some cases, Guam law does not permit review by regular appeal. See [Laxamana](#), 2001 Guam 26 ¶ 23 (acknowledging that “[n]o provision within 8 GCA § 130.20 permits the People to appeal a pretrial discovery order” but ultimately holding the court could exercise writ jurisdiction); [Borja v. Bitanga](#), 1998 Guam 29 ¶ 14 (acknowledging that “[t]he right to appeal is limited and not available to a defendant denied habeas relief” but nonetheless treating the appeal as a writ proceeding). Here, we find no statutory basis for exercising appellate jurisdiction.

C. Writ jurisdiction

[23] Finally, the People request that if jurisdiction is lacking pursuant to Title 8 GCA § 130.20, then this court may alternatively treat the instant appeal as a petition for an extraordinary writ. See Title 7 GCA, Chapter 31, Article 2 (2005) (governing writs of mandate). This court has, when faced with improperly filed appeals from denials of writs of habeas corpus, elected to treat those appeals as original petitions for writs of habeas corpus. See e.g., [Borja](#), 1998 Guam 29 ¶ 14 (“[W]e have the ability to elect to treat their appeals as original petitions for writs of habeas corpus filed with the court.”); [White v. Klitzkie](#), 1998 Guam 31 ¶ 13 (“Although this matter was filed as an appeal of an order denying habeas relief, we elect to treat this matter as an original petition for a writ of habeas corpus.”); [Naron v. Bitanga](#), 1999 Guam 21 ¶ 4 (“In its discretion, this court may elect to treat an appeal of the denial of a Petition for a Writ of Habeas Corpus as an original petition for the same relief. We elect to exercise such discretion in the instant matter”) (citation omitted). These cases, however, are *habeas corpus* proceedings involving *pro se* petitioners who failed to recognize this court’s original writ jurisdiction. In these *habeas corpus* cases, it was undisputed that this court had jurisdiction. In contrast, the parties here are represented by counsel and there is a dispute regarding whether writ jurisdiction would be proper. We distinguish the *habeas corpus* proceedings from this case, and therefore, decline to treat this appeal as a petition for an extraordinary writ. 

III.

[24] We hold that Title 8 GCA § 130.20 does not provide grounds for appellate review of a trial court’s grant of a Motion for Judgment of Acquittal. Natividad’s Motion to Dismiss is **GRANTED**. Therefore, this appeal is hereby **DISMISSED**.