IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

YUQIN XIAO,
Appellant,
v.
REPUBLIC OF PALAU,
Appellee.

Cite as: 2020 Palau 4
Criminal Appeal No. 19-002
Appeal from Criminal Case No. 18-142

Argued: February 10, 2020
Decided: February 25, 2020

Counsel for Appellant ..... Johnson Toribiong
Counsel for Appellee ..... Laisani Tabuakuro, AAG

BEFORE: JOHN K. RECHUCHER, Acting Chief Justice
GREGORY DOLIN, Associate Justice
KATHERINE A. MARAMAN, Associate Justice

Appeal from the Trial Division, the Honorable Oldiais Ngiraikelau, Presiding Justice, presiding.

OPINION

DOLIN, Associate Justice:

[¶ 1] Yuqin Xiao was charged with numerous criminal offenses stemming from her operation of the Good Mood Massage Parlor ("Good Mood"). Following trial, Xiao was convicted on four out of the nine counts she was charged with. On appeal, she argues that the evidence presented at trial is insufficient to sustain the convictions. For the reasons set forth below, we **AFFIRM IN PART, REVERSE IN PART, VACATE IN PART,** and **REMAND.**

FACTS

[¶ 2] Yuqin Xiao (or "Xiao Yuqin") is a long-term resident of Palau. Though not a citizen of the Republic herself, she is a holder of a residency permit on account of her marriage to a Palauan citizen.

[¶ 3] On August 1, 2018, Palauan law enforcement authorities received a complaint from Shi Jing and Jiang Huacui—two employees of Good Mood—both of whom, like Xiao, are Chinese nationals. Specifically, these individuals informed[1] law enforcement authorities that Xiao "provided sex services to clients and collected the money," and threatened them if they refused to provide sex services to Good Mood's clients. After investigating the allegations, on August 22, 2018, the Government filed a nine-count Information charging Xiao with Labor Trafficking in the First Degree (Counts 1 and 2); Labor Trafficking in the Second Degree (Count 3); People Trafficking (Count 4); Exploiting a Trafficked Person (Count 5); Prostitution (Count 6); Promoting Prostitution in the First Degree (Count 7); Working Without a Permit (Count 8); and "Being [an] Undesirable Alien" (Count 9). On the basis of the Information and the supporting affidavit, the Trial Division issued an arrest warrant on the same day.

[¶ 4] The matter was tried to a jury. At trial, Jiang testified that she personally observed Xiao engage in a sexual act with a customer and that Xiao bragged about earning money by performing sexual acts. Further, Jiang testified that Xiao threatened her with revoking her Palauan work permit and withholding her deposit for her plane ticket home. Shi testified to similar threats, as well as that Xiao threatened to "do something to her when she [goes] back to China" if she did not engage in sexual acts with clients. Trial Tr. 107.

[¶ 5] In support of the charge that Xiao was an "undesirable alien," the Government introduced evidence of her prior conviction for bribery in Criminal Case 17-124[2] and the President's formal designation, entered on

[1] Neither of the individuals could speak or write in English and used the services of an interpreter both during their interaction with law enforcement authorities and at trial.

[2] In that case, Xiao entered into a plea agreement and was, on September 29, 2017, sentenced to a one-year term of imprisonment, which was suspended on the condition of compliance

December 6, 2017, pursuant to 13 PNC § 1005(k) and (l), of Xiao as an "undesirable alien."

[¶ 6] On March 8, 2019, the jury returned a verdict finding Xiao Not Guilty on Counts 1 through 5 but Guilty on Counts 6 through 9. After receiving the Presentence Report, holding a hearing, and receiving attorney arguments, the Trial Division entered a final judgment imposing the following sentences: (1) on Count 7 ("Promoting Prostitution in the First Degree")—five years' supervised probation, with the condition that Xiao serve one year of imprisonment; (2) on Counts 6 ("Prostitution") and 8 ("Working Without a Permit")—thirty days of imprisonment on each count, to be served concurrently with the sentence on Count 7; and finally, (3) on Count 9 ("Being [an] Undesirable Alien")— Deportation.

[¶ 7] This timely appeal followed.

STANDARD OF REVIEW

[¶ 8] We review the sufficiency of the evidence underlying a criminal conviction for clear error, asking whether "the evidence presented was sufficient for a rational fact-finder[] to conclude that the appellant was guilty beyond a reasonable doubt as to every element of the crime." *Wasisang v. ROP*, 19 ROP 87, 90 (2012) (internal quotation marks omitted). On appeal, the defendant who has been convicted by a jury no longer enjoys a presumption of innocence. *See Herrera v. Collins*, 506 U.S. 390, 399 (1993) ("Once a defendant has been afforded a fair trial and convicted of the offense for which he was charged, the presumption of innocence disappears."). Consequently, we review the evidence adduced at trial "in the light most favorable to the prosecution." *Wasisang*, 19 ROP at 90 (internal quotation marks omitted).

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with the terms of probation. Despite her arrest in the present matter, the Trial Division concluded that she successfully completed her probation on September 29, 2018.

DISCUSSION

A.

[¶ 9] Appellant argues that her convictions are not supported by sufficient evidence. Insofar as Counts 6 ("Prostitution") and 7 ("Promoting Prostitution in the First Degree") are concerned, Appellant's argument lacks merit. Given the testimony at trial, it was not unreasonable for the jury to convict Appellant on those counts.

[¶ 10] "A person commits the offense of prostitution if the person . . . [e]ngages in, or agrees or offers to engage in, sexual conduct with another person for a fee . . ." 17 PNC § 4801(a). Jiang testified that she personally observed Xiao put a customer's "penis in the vagina." Trial Tr. 75. She further testified that after seeing some clients, Xiao would "take the money and show [it] to [the other workers] and say that she had already earned more money *than massage*." Trial Tr. 76 (emphasis added). Shi testified that she personally observed Xiao sit on top of a naked male client who was lying on his back. She further testified that while it was not unusual for a masseuse to sit on top of a client, in such circumstances the client would be lying face down and wearing pants or at least underwear. Finally, and consistent with Jiang's testimony, Shi stated that after performing sexual services for clients, Xiao would "show to [the other workers] how much [money] she got" for these sexual services. Trial Tr. 106.

[¶ 11] Both witnesses were cross-examined by the Appellant's attorney. During the cross-examination, Xiao's attorney attempted to elicit an admission from Shi that the only reason she was testifying against Xiao is because she wanted Good Mood to close, which would allow Shi to transfer her work permit to a different employer.[3] Shi denied knowing of the relevant legal provisions and maintained that she was testifying truthfully and not because of any ulterior motive. Similarly, during the cross-examination of

[3] Generally, "[a] nonresident worker [is] ineligible for employment by any other employer in the Republic for five years following the date of termination of any previous employment in the Republic." 13 PNC § 1044(a). However, such ineligibility is waived where "the business dissolves," *id.* § 1044(a)(4), or the "employer is found guilty by a court of law for any crime where the nonresident worker, or a dependent of the nonresident worker, is a victim," *id.* § 1044(a)(3).

Jiang, the Appellant's attorney attempted to get the witness to admit that the story about prostitution was made up by Shi, who in turn tried to convince Jiang to go along with it so as to escape the restrictions of the Palau Labor Code. Again, the witness denied these motivations and insisted that she was testifying to things as they actually happened.

[¶ 12] Admittedly, the trial testimony is not a model of clarity. At the same time, that's not surprising because neither of the two key witnesses spoke English, and as it appears from the transcript, the interpreter's English was not perfect either. However, this is precisely the reason why judgments on the credibility of witnesses are the province of the trier of fact rather than the appellate tribunal that did not observe the witnesses' testimony or demeanor in reaction to questioning by counsel, and instead has access only to the cold record. *See, e.g.*, *Iyekar v. ROP*, 11 ROP 204, 207 (2004) ("It was up to the [trier of fact], having observed [the witness's] demeanor on the witness stand and having heard all of the evidence, to consider potential bias [and] to decide whether [the witness] should be believed or not. The [trier of fact] having made that determination, we are in no position, on the basis of a cold record, to say that it was an unreasonable one."). Accordingly, we conclude that the jury's verdict on Count 6 is not unreasonable and therefore affirm it.[4]

B.

[¶ 13] In order to obtain a conviction on the charge of Promoting Prostitution in the First Degree, the Government must prove that the accused "compell[ed] or induc[ed] a person by force, threat, fraud, or intimidation to engage in prostitution, or profit[ed] from such conduct by another." 17 PNC § 4803(a)(1).[5] A "threat" is defined, *inter alia*, as "threatening by word or

[4] We reject Appellant's invitation, pressed both in briefs and at oral argument, to re-examine Shi's and Jiang's testimony with skepticism because they are allegedly "disgruntled" employees seeking to "get even" with their employer. Challenges to witness credibility have their place at trial, but "absent extraordinary circumstances, the reviewing court does not weigh the evidence or evaluate witness credibility when making sufficiency of the evidence determinations." *United States v. Hemsher*, 893 F.3d 525, 531 (8th Cir.), *cert. denied*, 139 S. Ct. 470 (2018).

[5] One is also guilty of Promoting Prostitution in the First Degree when one "[a]dvances or profits from prostitution of a person less than eighteen years old." 17 PNC § 4803(a)(2).

conduct" to "[c]ause bodily injury in the future to the person threatened or to any other person," *id.* § 4803(c)(2)(A); "cause a public servant to take or withhold [an official] action," *id.* § 4803(c)(2)(I); "[d]estroy, conceal, remove, confiscate, or possess any actual or purported passport, or any other actual or purported government identification document, or other immigration document, of another person," *id.* § 4803(c)(2)(K); or perform "any other act that would not in itself substantially benefit the defendant but that is calculated to harm substantially some person with respect to the threatened person's . . . business, calling, career, [or] financial condition," *id.* § 4803(c)(2)(L).

[¶ 14] Appellant argues that the Government failed to present sufficient evidence of a "threat" as that term is defined in § 4803(c). We disagree.

[¶ 15] At trial, Jiang testified that when she refused to provide sexual services to Good Mood's clients, Xiao threatened to "not turn back the deposit [for the flight to China] and also cancel her work permit." Trial Tr. 72. From this testimony, the jury could have reasonably inferred that Xiao threatened to "cause a public servant to take or withhold [an official] action," 17 PNC § 4803(c)(2)(I), with respect to Jiang's work permit and that such action would have been taken for the purpose of coercing her to engage in prostitution. The jury could also have reasonably concluded that Xiao's words amounted to a threat to "possess . . . any other actual or purported government identification document, or other immigration document, of another person." 17 PNC § 4803(c)(2)(K). Finally, given that under the Palauan Labor Code Jiang would be prohibited (except in limited circumstances) from obtaining any other employment outside of Good Mood, *see* 13 PNC § 1044(a), a jury could reasonably conclude that the threats to "cancel [Jiang's] work permit" and "not turn back the deposit" for the flight to China are acts that, though having no substantial benefit for Xiao, were "calculated to harm substantially [Jiang] with respect to [her] . . . business, calling, career, [or] financial condition." 17 PNC § 4803(c)(2)(L).

[¶ 16] Additionally, Shi testified that Xiao "told her [that she] own[s] [Shi's] work permit and [that Shi] need[s] to do what [Xiao] told [her] to do."

However, as both victims in this case were over 18 years of age, this subsection is not implicated in the present case.

Trial Tr. 107. While this statement can be construed as an innocent statement of basic truth that employees who do not wish to be fired need to follow their employer's legitimate directions, a jury was entitled to conclude that, in context, Xiao's statement was a threat as that term is defined in 17 PNC § 4803(c)(2)(I), (K), or (L).

[¶ 17] Finally, Shi testified that Xiao told her she (Xiao) "know[s] many powerful person[s] in Palau," "know[s] her address in China," and can "do something to her when she [Shi] come [*sic*] back to China." Trial Tr. 107. Again, this statement is potentially open to multiple interpretations, but a jury could reasonably conclude that it was meant as a threat to "[c]ause bodily injury in the future to" Shi. 17 PNC § 4803(c)(2)(A).

[¶ 18] During her detailed cross-examination of Jiang and Shi, Appellant's counsel caused both of the witnesses to admit that, during their tenure at Good Mood, they were permitted to travel back to China, to help take care of their significant others, and that they otherwise had a relationship with Xiao that could appear inconsistent with the claim of having been threatened. On the basis of this testimony, the jury would certainly have been entitled to disbelieve the allegations of threats. But the jury was also entitled to conclude that Xiao's demeanor and relationship with her staff was mercurial and that periods of tranquility alternated with threats and coercion. Because after a judgment of conviction we view the jury's verdict in the light most favorable to the Republic, *Wasisang*, 19 ROP at 90, we will not "[r]evers[e] the jury's conclusion simply because another inference is possible [] or even equally plausible." *United States v. Caraballo-Rodriguez*, 726 F.3d 418, 432 (3d Cir. 2013) (*en banc*).

C.

1.

[¶ 19] Appellant's conviction and sentence on Count 8 ("Working Without a Permit") present a more complex problem. For reasons that follow, we affirm the conviction but vacate the sentence on this count.

[¶ 20] Appellant did not raise, before us or the trial court, the issues we identify with the conviction and sentence on Count 8.[6] Ordinarily, we will not consider issues not properly raised on appeal. *Robert v. Cleophas*, 2019 Palau 6 ¶ 15 n.4. However, in a criminal matter, we will review issues that have not been properly preserved for plain error. *Scott v. ROP*, 10 ROP 92, 95 (2003). Pursuant to our case law and ROP R. Crim. P. 52(b), an error is plain if it is clear or obvious and affects the appellant's substantial rights. *Id.* at 95-96 (citing *United States v. Olano*, 507 U.S. 725, 732 (1993)); *see also Tell v. Rengiil*, 4 ROP Intrm. 224, 226 (1994) (noting that we will consider an issue that has not been properly raised "to prevent the denial of fundamental rights, especially in criminal cases where the life or liberty of the accused is at stake"). An error affects "substantial rights" when it is "prejudicial[, *i.e.*,] [i]t must have affected the outcome of the [trial] court proceedings." *Olano*, 507 U.S. at 734. We review Appellant's conviction and sentence on Count 8 under this rubric.[7]

[¶ 21] Count 8 of the Information charged Xiao with "Working Without a Permit, in that [she] was employed at Good Mood Massage Parlor without a valid nonresident work permit, in violation of l3 PNC § 1048."

[¶ 22] The Constitution of the Republic of Palau requires that "[a] person accused of a criminal offense . . . shall enjoy the right to be informed of the nature of the accusation" against her. ROP Const. art. IV, § 7. Our Rules of Criminal Procedure echo that prescription and require that "[t]he information shall state for each count the citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated." ROP R. Crim. P. 7(c)(1). When charging documents fail to provide the

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[6] At trial and on appeal, Appellant argued that, as the spouse of a Palauan citizen, Xiao is not required to obtain a nonresident worker's permit. We reject that argument as clearly contrary to the language of 13 PNC § 1048(b) and Republic of Palau Labor Rule 15.1.

[7] To the extent we have not previously made it explicit, in criminal cases we will review issues for plain error whether or not they were preserved at trial or identified on appeal. *See* ROP R. Crim. P. 52(b) ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."); *United States v. Levy*, 391 F.3d 1327, 1341 n.8 (11th Cir. 2004) (Tjoflat, J., dissenting from denial of reh'g *en banc*) (noting that "Rule 52(b) does not distinguish between trial-level and appellate-level forfeitures") (emphasis omitted).

defendant with proper notice of what specific crime he is alleged to have committed, these requirements are violated.

[¶ 23] Section 1048 of Title 13 specifies conditions that must be met by a non-Palauan citizen prior to obtaining a work permit. Subsection (b) specifies that those individuals "present in the Republic pursuant to a . . . spouse . . . visa . . . who desire to remain in the Republic for employment, may change their status to a worker visa." 13 PNC § 1048(b). The particular statutory provision does not prohibit working without proper authorization, nor does it govern the actual grant of authorization to work. All section 1048 does is govern how a non-Palauan citizen applies for a worker visa. In contrast, § 1049 makes it "unlawful for any nonresident[8] worker admitted into the Republic under the provisions of this chapter to engage in any other employment for compensation or for profit other than for the employer who has contracted with the Director [of the Bureau of Immigration] for the employment of such nonresident worker in the Republic." Subsection (c) further specifies that "[v]iolation of the provisions of *this section* by an employer or nonresident worker shall also be subject to the penalties prescribed by section 1067 of this title." 13 PNC § 1049(c) (emphasis added). Section 1067 prescribes a penalty of a $50 fine, imprisonment of up to five days, or both, for violation of § 1049 and § 1047(c), which in turn requires that "[t]he nonresident worker shall be required to keep [h]is nonresident worker's identification] certificate on his person at all times."

[¶ 24] At trial, the Government presented evidence that Xiao was an employee of Good Mood and worked there without a nonresident worker's permit. Further, given the absence of a permit, this evidence would suggest that Xiao did not keep a valid nonresident worker's identification certificate on her person at all times. In other words, the Government presented evidence that Xiao violated §§ 1047(c) and 1049 of the Labor Code. However, as stated previously, the Information charged Xiao with the violation of § 1048, which is merely a laundry list of materials that a nonresident must submit in order to receive authorization to work, the

[8] We note that the term "nonresident worker" used throughout the Code is technically imprecise. These workers are *residents* but not *citizens* of the Republic. Nonetheless, because this term has taken root and is readily understood, we continue to use it.

violation of which is not a punishable offense under § 1067. Thus, manifestly, the Information miscited the statute under which Xiao was prosecuted.

[¶ 25] Our Rules of Criminal Procedure foresee that sometimes minor typographical errors can creep into charging documents and thus caution that "[e]rror in the citation [of a statute] or its omission shall not be ground[s] . . . for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice." ROP R. Crim. P. 7(c)(2). We therefore must decide whether citing to a wrong section of the Labor Code prejudiced Xiao. While we are concerned about the Government's seeming carelessness in drafting the charging document, we reluctantly hold that, in this case, Appellant suffered no prejudice.

[¶ 26] The Labor Code and the provisions and regulations governing the requirement of obtaining a nonresident worker's permit are rather complex, treating, in certain matters, spouses of Palauan citizens differently from other individuals. We recognize that the navigation of these provisions could be challenging. Indeed, even at oral argument, neither Appellant nor the Government was entirely clear on which provisions and procedures apply to people in Xiao's situation. Nonetheless, it is clear that even as a spouse of a Palauan citizen, Xiao was obligated to obtain a worker's permit if she intended to be paid for the services she performed at Good Mood. It is also clear that Xiao's visa was cancelled following her previous conviction in Case No. 17-124, and that she did not have physical possession of a valid nonresident worker's identification certificate. Thus, "[t]here is no suggestion that the substance of the trial would or could have been any different if the [Information] had referred to" the correct section of the Labor Code. *United States v. Ray*, 514 F.2d 418, 422 (7th Cir. 1975). Indeed, Xiao proffered no defense or argument with respect to Count 8 prior to the present appeal. Xiao made no objections to the Trial Division's jury instruction on that count. Given that it is undisputed that her prior nonresident worker permit was cancelled and given that she was legally required to maintain such a permit if she wished to engage in gainful activities, we are hard pressed to see what defense the Appellant *could* have offered.

[¶ 27] Furthermore, because the Information "correctly informed [Xiao] of the nature of the charge" against her, *United States v. Brown*, 284 F.2d 89, 91 (4th Cir. 1960), the Information in substance complied with the constitutional requirement of informing the accused of the "*nature* of the accusation" lodged against her. ROP Const. art. IV, § 7 (emphasis added). There being "no showing that [Xiao] or h[er] counsel was in any way misled, much less prejudiced, by the careless mis-citations," *Brown*, 284 F.2d at 91, the conviction on Count 8 need not be set aside.

[¶ 28] We do take this opportunity, however, to caution the Government that our refusal to set aside a conviction in this case should not be taken as a license to carelessly file charging documents without assuring itself that the document reflects and recites the actual crime the defendant stands accused of. Attention to detail in criminal matters is particularly important and serves to protect defendants from entering a guilty plea or mounting a trial defense without fully understanding the nature of the offense being charged. It is doubly so in a country where for a large portion of the defendants English—though the language of the judiciary—is not a native language. We hope not to see such errors again.[9]

2.

[¶ 29] Although we find the mis-citation of the relevant statute in the Information to be a harmless error, we are constrained to vacate the sentence imposed on Count 8. The penalties that can be imposed on a nonresident worker for violating relevant provisions of Title 13 are set out in section 1067(b). Under that provision, a person convicted of failure to comply with the requirements of Title 13 can be "fined not more than fifty dollars ($50), or imprisoned for not more than *five (5) days*, or both." 13 PNC § 1067(b) (emphasis added).[10] Yet, the Trial Division sentenced Appellant to *thirty*

[9] We note that neither Appellant's trial counsel, appellate counsel, nor the Trial Division picked up on the error.

[10] Technically speaking, section 1067(b) only provides penalties for violations of section 1047. However, section 1049(c) explicitly states that violators of section 1049 will be "subject to the penalties prescribed by section 1067 of this title." The slightly awkward drafting does not affect our analysis.

days of incarceration on this conviction, or *six times* the maximum term of imprisonment permitted by statute.

[¶ 30] This is plain error. When a statute explicitly sets out the limits of a court's power to sentence a criminal defendant and the court exceeds those limits, such an error is indeed "clear" or "obvious." *See United States v. Wims*, 245 F.3d 1269, 1272 (11th Cir. 2001) ("A sentence that exceeds the statutory maximum . . . is clear error under current law."). And no right is more "substantial" than the right to liberty and to be free from unlawful confinement. *See* ROP Const. art. IV, § 6. Any sentence that has the effect of incarcerating an individual for a term in excess of what the statute allows necessarily violates the individual's substantive rights. *See Noyd v. Bond*, 395 U.S. 683, 699 (1969) (stating that even where an individual "has only two days yet to serve on his sentence, he should not be required to surrender his freedom for even this short time unless it is found that the law so requires.").

[¶ 31] "A sentence is passed not because the defendant is a social outcast or needs chastisement generally. It is the law's punishment for specific transgressions of its formalized standards." *Benson v. United States*, 332 F.2d 288, 291 (5th Cir. 1964). It is true that the Trial Division ordered that the thirty-day sentence run concurrently with the lawful sentences on Counts 6 and 7, and therefore Xiao's overall term of incarceration is not in excess of the maximum statutory term of 25 years, which could have been imposed following her conviction for Promoting Prostitution in the First Degree—a Class A felony. *See* 17 PNC §§ 662; 4803(b). It may well be that even if the Trial Division had properly sentenced Appellant, the overall term of imprisonment would still have been one year. "The test, however, is not what the court might have done; the test is whether the original sentence comported with the law." *Jones v. United States*, 224 F.3d 1251, 1259 (11th Cir. 2000). We now conclude that even where the overall length of imprisonment may not be affected, a sentence on any count that exceeds the statutory maximum for that count must be set aside and the matter remanded to the trial court for the imposition of a proper sentence. *See United States v. Milán-Rodríguez*, 819 F.3d 535, 541 (1st Cir. 2016) (vacating a sentence exceeding the statutory maximum for a count even though the entire sentence

was within the statutory maximum for a separate count). We therefore vacate the sentence on Count 8.

D.

[¶ 32] We next consider Appellant's conviction on Count 9 for the alleged crime of "Being [an] Undesirable Alien" in violation of l3 PNC § 1051. At oral argument, the Government commendably (though belatedly) admitted that section 1051 is not a criminal statute and imposes no obligation on anyone other than the Government. Under that section, "following completion of any term of imprisonment imposed by the court," a nonresident worker convicted of a felony must be deported. 13 PNC § 1051. Though the statute authorizes charging the costs of such deportation to the convicted nonresident worker, it does not create a criminal offense that can be violated by the worker.[11]

[¶ 33] Doubtless, the Government may exclude non-citizens from the Republic. *See* 13 PNC § 1005 (authorizing the President of the Republic to designate individuals as excludable from the Republic). Indeed, following her conviction for bribery in Case No. 17-124, Xiao was specifically designated as an undesirable alien by the President. Given this designation, and the operation of 13 PNC § 1051, she will be deported once her sentence of incarceration is completed. None of this, however, converts section 1051 into a criminal offense.[12]

[¶ 34] Consistent with the Government's confession of error and the discussion above, we reverse the conviction on Count 9 and the associated order of deportation.

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[11] By its very nature, deportation is an act that must be accomplished by the sovereign and not by the private individual. *See, e.g., Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("[T]he power to admit or exclude aliens is a sovereign prerogative."); *Mahler v. Eby*, 264 U.S. 32, 39 (1924) ("The right to expel aliens is a sovereign power . . . .").

[12] Furthermore, the attempt to have the courts adjudicate nonresident worker's undesirability may well violate the separation of powers. Our Legislature saw fit to invest the President with the power to determine which nonresidents are desirable and which are not. It did not confer such a power on the courts. Adjudicating this matter oversteps the authority granted to us by the Constitution and the laws of the Republic. At the same time, this opinion should not be read as expressing any view on whether the Presidential designation of an individual as an undesirable alien under 13 PNC § 1005 is judicially reviewable. That matter is not before us today, and we do not address it.

E.

[¶ 35] Finally, although we affirm Xiao's conviction on Counts 6, 7, and 8, we remand the matter for resentencing. We have already discussed why the sentence imposed on Count 8 was improper. And although we conclude that the sentences on Counts 6 and 7 were *lawful* (in that they did not exceed a statutory maximum and were imposed with due procedural regularity), we recognize that in light of the vacatur of the conviction on Count 9, and our discussion of the erroneous sentencing on Count 8, the Trial Division may, on remand, have a different view of what constitutes an appropriate overall sentence in this case. We, of course, leave that matter in the Trial Division's capable hands.[13] At the same time, because Xiao's term of incarceration is scheduled to be concluded by May 30, 2020, *i.e.*, just about three months from the issuance of the present opinion, the Trial Division shall conduct a resentencing hearing on an expedited basis, lest the matter become moot by Appellant's completion of her sentence.

CONCLUSION

[¶ 36] The convictions on Counts 6 ("Prostitution"), 7 ("Promoting Prostitution in the First Degree"), and 8 ("Working Without a Permit") are **AFFIRMED**. The conviction on Count 9 ("Being [an] Undesirable Alien") is **REVERSED.** The sentences on Counts 6, 7 and 8 are **VACATED**, and the matter is **REMANDED** for resentencing on Counts 6, 7 and 8. The Trial Division shall conduct a resentencing hearing **FORTHWITH.**

[13] It goes without saying that on remand the Trial Division may not increase the previously imposed sentence. *See* 17 PNC § 620.