IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

DEVON IYECHAD,
Appellant,
v.
REPUBLIC OF PALAU,
Appellee.

Cite as: 2022 Palau 25
Criminal Appeal No. 22-005
Appeal from Criminal Case No. 13-133 & 13-127

Decided: November 10, 2022

Counsel for Appellant ..... Watekini S. A. Mucunabitu
Counsel for Appellee ..... Rebecca Sullivan, Esq.

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice
JOHN K. RECHUCHER, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

Appeal from the Trial Division, the Honorable Lourdes F. Materne, Associate Justice, presiding.

OPINION[1]

NGIRAIKELAU, Chief Justice:

[¶ 1] This appeal arises from the conviction of Devon Iyechad ("Appellant"), his subsequent violation of the conditions of his probation, and his appeal of the probation revocation hearing sentencing him to eight years and six months imprisonment.

[¶ 2] Because we conclude that the Appellant's new sentence, following revocation of his probation, exceeded and was more severe than his original

[1] No party having requested oral argument, the appeal is submitted on the briefs. *See* ROP R. App. P. 34(a).

sentence in violation of 17 PNC § 620 and his constitutional right under the double jeopardy clause of the Palau Constitution, we **VACATE** and **REMAND**.

BACKGROUND

[¶ 3] Appellant was convicted on November 7, 2014, to Count 3 of Assault and Battery with Dangerous Weapon and Count 4 of Assault and Battery. Appellant was sentenced to eight years and six months, all suspended but for three years, and placed on probation. On April 26, 2022, a status report was filed by the Probation Office. The report stated that Appellant had failed to comply with the first condition of his probation, which required him to pay restitution to the victim. On June 17, 2022, the Trial Division held a probation revocation hearing, during which Appellant admitted to violating his probation by failing to make any restitution payment. The Court revoked Appellant's probation and imposed a sentence of eight years and six months. Appellant filed his notice of appeal and designation of records in this matter on June 24, 2022, and his opening brief on July 20, 2022.

[¶ 4] Appellant seeks reconsideration of the probation revocation, arguing that his counsel did not receive an opportunity to mitigate on his behalf, that the trial court failed to weigh if the non-compliance with his probation condition was substantial, and that the trial court erred in sentencing Appellant to the full term of his original sentence.

DISCUSSION

I. Issues Waived for Failure to Develop

[¶ 5] Rule of Appellate Procedure 28 provides that the body of all opening briefs shall contain a legal argument. ROP R. App. P. 22. This Court will not consider appeals that fail to adequately develop legal arguments. *See Chokai v. Sengebard*, 2021 Palau 35 ¶ 7; *see also Dakubong v. Aimeliik State Gov't*, 2021 Palau 19 ¶ 11 ("The Republic of Palau Rules of Appellate Procedure and the Court's case law impose both formal and substantive requirements for adequate appellate briefing.") (quoting *Suzuky v. Gulibert*, 20 ROP 19, 21 (2012)). As we explained in *Dakubong*, "[a] legal argument is a connected series of statements intended to establish a definite legal proposition. It involves more

than mere citations to a case without explaining why or how that case is relevant to the facts of the case at hand." *Id.* In order for us to consider an issue, a litigant raising it must do "more than just identify[] what the litigant believes to be a governing legal principle and list[] various facts in the records. Rather, an adequate argument is one where a litigant applies the governing law to the facts of his case." *Id.*

[¶ 6] In this case, Appellant fails to properly develop any legal argument. First, Appellant maintains that his counsel was not given an opportunity to mitigate on his behalf. Appellant only states that the trial court must hear mitigating arguments per 17 PNC § 636. The Code states that Appellant has the right to be represented by counsel during a revocation hearing, but it does not prescribe a duty for the trial court to hear mitigating arguments. Furthermore, Appellant does not present any facts showing that the trial court refused to hear said arguments. The record shows that Appellant was properly represented by counsel during the revocation hearing, as required by 17 PNC § 636. Second, Appellant argues that the trial court failed to weigh whether the probation condition at issue, the restitution payments, were substantial conditions of Appellant's probation. However, Appellant does not introduce any fact showing that the trial court did not make this determination. Appellant only disagrees with the result reached, but fails to explain why this determination is erroneous.

[¶ 7] We have "repeatedly refused to consider claims brought before [us] that are not well developed and supported by facts on the record or law." *Aderkeroi v. Francisco*, 2019 Palau 29 ¶ 12. That is because "[i]t is not the Court's duty to interpret this sort of broad, sweeping argument, to conduct legal research for the parties, or to scour the record for any facts to which the argument might apply." *Idid Clan v. Demei*, 17 ROP 221, 229 n.4 (2010). We see no reason to deviate from this long-standing policy here. By failing to adequately develop his legal argument, Appellant has forfeited his right to have this Court review the appeal on the merits of the first two issues.

II. Reinstatement of the Original Sentence in Full

[¶ 8] In his last argument, Appellant contends that the trial court erred by re-imposing the entire original sentence of eight years and six months. Although this argument is improperly developed in Appellant's brief, we

choose to address it regardless to ensure the proper administration of justice. We may decline to deem an issue waived where: (1) addressing the issue would "prevent the denial of a fundamental right, especially in criminal cases where the life or liberty of an accused is at stake;" or (2) the general welfare of the people is at stake. *Kotaro v. Ngirchechol*, 11 ROP 235, 237 (2004). We believe this is the case here. Appellant was initially convicted to eight years and six months imprisonment. All was suspended but for three years. Therefore, Appellant already executed three years on his original sentence when the Trial Division re-sentenced him to eight years and six months of imprisonment during the revocation hearing.

[¶ 9] 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). 17 PNC § 670 (b) states the following:

> When a judgment of conviction or a sentence is vacated and a new sentence is thereafter imposed upon the defendant for the same crime, the period of detention and imprisonment theretofore served shall be deducted from the minimum and maximum terms of the new sentence. The officer having custody of the defendant shall furnish a certificate to the court at the time of sentence, showing the period of imprisonment served under the original sentence, and the certificate shall be annexed to the official records of the defendant's new commitment.

Therefore, the Constitution and the statutory framework both ensure that, during a probation revocation hearing, a defendant may be credited for the period of detention he has already served before being released on probation.

[¶ 10] In *Blesoch v. Republic of Palau*, 17 ROP 198, 200 (2010), this Court stated that a defendant cannot receive credit for time spent on probation. The general rule is that "upon revocation of probation, the sentencing court may

execute the entire sentence that it originally imposed and suspended." *Id.* (citing *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 v. United States*, 327 F.2d 795, 797 (10th Cir. 1964)) However, the *Blesoch* court specifically noted that "while a person remains at large on probation, the *suspended portion* of the sentence remains in full." *Id.* (quoting 21A Am. Jur. 2d Criminal Law § 844) (emphasis added).

[¶ 11] Thus, *Blesoch* is clear that 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. *Blesoch*, 17 ROP at 201. However, by re-imposing a portion of the sentence that has already been executed, the Trial Division effectively imposed a second punishment for the same offense. Sentencing Appellant to a total of eleven years and six months of imprisonment, when Appellant's initial sentence amounted to less, violates his constitutional protection against double jeopardy. *See Xiao v. Republic of Palau*, 2020 Palau 4, ¶ 35, n. 13; *see also Roberts*, 320 U.S. at 271 (finding that a federal statute did not confer unto a court the power to impose an increased sentence during a revocation hearing, after the execution of that sentence had been suspended for the period of probation); *United States v. Benz*, 282 U.S. 304, 307 (1931) (holding that the court has the power to mitigate to a punishment that has been imposed but not to increase it. Otherwise, it would subject "the defendant to double punishment for the same offense in violation of the Fifth Amendment to the Constitution . . .").

[¶ 12] Accordingly, during a revocation hearing, a trial court may only re-impose the suspended portion of the sentence. The trial court maintains its discretion to impose the full suspended portion, or only a part.

[¶ 13] Therefore, the Trial Division committed clear error in sentencing Appellant to the full eight years and six months imprisonment, when it should not have exceeded the time suspended. Pursuant to 17 PNC § 670 (b), the Trial Division should confirm the exact period of time initially served by Appellant before probation, and deduct that time from the new sentence.

CONCLUSION

[¶ 14] For the reasons set forth above, we **VACATE** and **REMAND** for resentencing consistent with this opinion.