

**IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,

Plaintiff,

v.

JOSE RUBUENOG,

Defendant

Civil Action No. 99-254

**ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS INFORMATION**

I. PROCEDURAL BACKGROUND

This matter came before the Court on October 27, 1999, in Courtroom 217A on Defendant Jose Rubuenog's motion to dismiss information. Elaine A. Paplos, Esq. appeared on behalf of Plaintiff. Masood Karimipour, Esq. appeared on behalf of Defendant. The Court, having reviewed the memoranda, declarations, and exhibits, having heard and considered the arguments of counsel, and being fully informed of the premises, now renders its written decision. [p. 2]

II. FACTUAL BACKGROUND

On June 2, 1998, Defendant pled guilty to driving under the influence ("DUI") in Traffic Case 97-10295. In exchange for his plea of guilty, Defendant promised to perform, among other things, the following conditions: (A) serve 30 days imprisonment¹; (b) pay a \$1000 fine at a rate of \$75.00 per month commencing July 17, 1998; (c) pay for, attend, and complete an alcohol information class on August 22, 1998; (d) perform 24 hours of community work service; (e) pay restitution in an amount to be determined by the Probation Office; and (e) remain on supervised probation for a period of one year. Pursuant to the plea agreement, the court entered an Order of Judgment and Probation Commitment (the "Judgment and Probation/Commitment Order") that set

¹ The terms of the plea required the Defendant to serve 30 days of the 70 days imposed, 40 days having been suspended.

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forth the terms and conditions of the Defendant's probation. Pursuant to the terms of the Judgment and Probation/Commitment Order, Defendant's probation continued through June 2, 1999.

On or about May 10, 1999, the Office of Probation filed an "Affidavit in Support of the Government's Motion to Revoke the Defendant's Probation/Suspended Sentence" asserting that the Defendant had failed to pay the Alcohol Information Class tuition fee and \$750.00 of his \$1,000 fine (Def. Mot. To Dismiss, Exhibit "A."). On June 3, 1999, one day after the Defendant's probation had expired, the Office of the Attorney General filed an Information charging the Defendant with one count of contempt for failing to comply with the Judgment and Probation Commitment Order of June 2, 1998, in violation of 6 CMC § 3307.

Following the filing of the Information and notwithstanding the expiration of probation, Defendant made additional payments to the court. A Probation Office report dated September 27, 1999 reflects that the Defendant paid his fine in full and completed his Alcohol Information Class.² The Report indicates that of the \$3,798.89 ordered in restitution, an \$849.89 balance remained outstanding as of September 24, 1999 (Def. Mot. To Dismiss, Exhibit "C"). [p. 3]

III. QUESTION PRESENTED

Defendant has filed a Motion to Dismiss the Information, contending that the proper procedure for a defendant's failure to abide by a sentencing order would be a revocation of probation hearing and not the filing of contempt charges. The question to be decided by this court, therefore, is as follows: Whether the government may charge a person with criminal contempt for failing to comply with a condition of a suspended sentence after the period of probation has expired.

IV. ANALYSIS

Commonwealth courts have previously ruled that the court's jurisdiction to revoke probation and impose a suspended sentence expires with the termination of the probationary period. *See CNMI v. Udei*, Traffic Case No.97-T-4019 (N.M.I. Super. Ct. Feb. 18, 1999) (court lacks jurisdiction to revoke a defendant's suspended sentence under 6 CMC 4113(d) when the revocation process was initiated but not completed within the probationary period); *CNMI v. Baulechong*, Criminal Case

² The Report does not indicate whether the Defendant paid the Class fee.

No. 93-001 (N.M.I. Super. Ct. Nov. 27, 1998 (plain language of 6 CMC § 4113(d) acts to prevent the Commonwealth from pursuing a revocation of probation after the end of the probationary term).

Whether the expiration of the probationary period and the jurisdictional problem presented has prompted the filing of the instant charge of criminal contempt this court cannot say. However, the CNMI Superior Court has previously addressed the issue presented in this case.. *See CNMI v. Sablan* Crim.Case No. 99-188 (N.M.I. Super. Ct..Nov. 30, 1999). In *Sablan*, the Court held that a defendant's violation of terms of a suspended sentence subjects that defendant to reimposition of the sentence under 6 CMC § 4105, but not to charges of criminal contempt. Therefore, in accordance with the *Sablan* decision, the Court finds that charging Defendant with criminal contempt is improper. [p. 4]

V. CONCLUSION

For all the reasons stated above, Defendant's motion to dismiss the Information is **GRANTED**. The Information charging Defendant with one count of criminal contempt shall be dismissed with prejudice.

So ORDERED this 13 day of January, 2000.

/s/ Timothy H. Bellas
TIMOTHY H. BELLAS, Associate Judge