

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

COMMONWEALTH OF THE NORTHERN )  
MARIANA ISLANDS, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
ALAN JAMBALOS ECURA, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Traffic Case No. 99-2416

**ORDER**

**I. PROCEDURAL BACKGROUND**

This matter came before the court on December 18, 2000, in Courtroom 220 at 3:00 p.m. for a status conference. Elaine A. Paplos, Esq., appeared on behalf of the Commonwealth. Chief Public Defender Massood Karimipour, Esq., appeared on behalf of the Defendant, Alan Jambalos Ecura. The court, having heard the arguments of counsel and being fully informed of the premises, now renders its decision.<sup>1</sup> [p. 2]

**II. FACTS**

On April 22, 1999, at 2:49 a.m., Alan Jambalos Ecura (Defendant) was confronted by a Department of Public Safety Officer and given a traffic citation for the following alleged offenses: (1) Reckless Driving, in violation of 9 CMC § 7104; (2) Driving Under the Influence, in violation of 9 CMC § 7105; and (3) Refusal to Submit to an Alcohol Breath Test, in violation of 9 CMC § 7106.

On October 22, 1999, pursuant to a plea agreement, the court entered a probation and commitment order whereby Defendant plead guilty to Driving Under the Influence, in violation of

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<sup>1</sup> The court notes that it initially denied the Commonwealth's oral motion to withdraw its motion to revoke probation, pending the court's further consideration of the issues addressed at such hearing. After careful consideration, the court hereby vacates its initial oral ruling. Accordingly the court now enters this written decision which shall supersede the oral pronouncement made on December 13, 2000.

**FOR PUBLICATION**

9 CMC § 7105 and to Refusal to Submit to an Alcohol Breath Test, in violation of 9 CMC § 7106. Pursuant to the probation and commitment order Defendant was placed on probation from October 22, 1999, to October 21, 2000. The probation and commitment order also set forth the following conditions for Defendant's probation: (1) Defendant was required to pay a fine of \$500.00, such amount to be paid at the rate of \$50.00 per month beginning November 15, 1999; (2) Defendant was required to attend Alcohol Information Class on November 20, 1999, and was required to pay tuition for such class; and (3) Defendant was required to return to court on August 10, 2000, for a review hearing.

On August 10, 2000, the matter came on for a review hearing and the Commonwealth represented that Defendant had not paid any of the \$500.00 fine and had not attended the Alcohol Information Class (AIC). A second review hearing was set for September 14, 2000.

On September 5, 2000, the Commonwealth filed a notice of motion and motion to revoke probation which *sua sponte* set a hearing date for September 14, 2000, such date having originally been set by the court for a second review hearing.

On September 14, 2000, the matter came on for the review hearing but Defendant did not appear. The Commonwealth represented to the court that Defendant was still in non-compliance with the conditions of his probation in that Defendant had not paid the \$500.00 fine and had not attended Alcohol Information Class.

On September 18, 2000, the court issued a bench warrant in the amount of \$600.00 for Defendant's failure to appear at the September 14, 2000, review hearing.

On October 3, 2000, the Commonwealth again filed a motion to revoke probation, such motion being captioned as a "Complaint/Motion/Petition for Probation Revocation." [p. 3]

On October 5, 2000, the court issued an arrest warrant in the amount of \$700.00, such warrant being issued upon the filing of an affidavit by Mr. John Aguon of the Commonwealth of the Northern Mariana Islands Office of Adult Probation attesting that there was probable cause to believe that Defendant was in violation of the terms and conditions of his probation.

On October 20, 2000, at 2:00 p.m. Defendant was arrested and brought before the court at which time the court entered a bail order allowing Defendant's release upon the posting of a \$100.00

cash bail. Defendant was unable to post \$100.000 cash bail and was therefore remanded to the custody of the Department of Corrections until October 23, 2000, at 2:58 p.m. at which time Defendant appeared before the court and was again unable to post \$100.00 cash bail. At such time, given the fact of Defendant's continued incarceration, the court allowed Defendant to be released with only Defendant's promise to appear as assurance that Defendant had learned from his incarceration that any further failure to appear would not be tolerated. At that point, however, Defendant's probationary period had expired and the only reason for his continued incarceration past the expiration of his probationary period was his inability and/or unwillingness to pay the \$100.00 cash bail.

### III. ISSUES

1. Whether the court has jurisdiction to revoke Defendant's suspended sentence when the revocation process was initiated but not completed within the probationary period and where the Commonwealth improperly noticed a motion for revocation for a date set for a status conference and where a revocation hearing did not take place prior to October 21, 2000, the date of the expiration of Defendant's probationary period.

2. Whether the warrants issued by the court on September 18, 2000, and October 5, 2000, allow the court to retain jurisdiction to revoke Defendant's suspended sentence despite the fact that the Defendant's probationary period has expired.

### IV. ANALYSIS

#### A. Jurisdiction of the Court to Revoke Defendant's Suspended Sentence.

The revocation of a defendant's suspended sentence is governed by 6 CMC § 4113, which states in pertinent part: [p. 4]

(b) Upon violation of any of the terms and conditions of probation at any time during the probationary period, the court may issue a warrant for the rearrest of the person on probation and, after giving the person an opportunity to be heard and to rebut any evidence presented against the person, may revoke and terminate the probation.

(d) The court may at any time during the period of probation modify its order of suspension of imposition of sentence. . . . **If the court has not revoked the order of probation and pronounced sentence, the defendant shall, at the end of the term of probation, be discharged by the court.**

See 6 CMC § 4113 (emphasis added).

The Commonwealth and Defendant agree that the Commonwealth's motion to revoke suspended sentence should be dismissed with prejudice because the court lacks jurisdiction to grant such a motion when the Defendant's probation period has expired. The Commonwealth Superior Court addressed this issue in *Commonwealth v. Udei*, in which the court held that it did not have jurisdiction over a Defendant unless a motion for revocation of probation is filed and a hearing takes place prior to the expiration of the probationary period. See *Commonwealth v. Udei*, Tr. Case No. 97-4019 (N.M.I. Super. Ct. Feb. 18, 1999) (Order Granting Defendant Terwick Udei's Motion to Dismiss, at 3) citing *Commonwealth v. Baulechong*, Cr. Case No. 93-001 (N.M.I. Super. Ct. Nov. 27, 1998) (Decision and Order Dismissing Motion to Revoke Probation) (The 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); see also *Commonwealth v. Hemley*, Cr. Case No. 91-146 (N.M.I. Super. Ct. Dec. 22, 1994) (Decision and Order on Revocation of Probation) (“[A] motion for revocation of probation must be filed and a hearing must take place prior to the expiration of the probationary period”).

In the present matter, the court no longer has jurisdiction to revoke Defendant's suspended sentence as no revocation hearing took place prior to October 21, 2000, the date Defendant's probationary period expired.

B. Continuing Jurisdiction to Revoke Defendant's Suspended Sentence Due to the Existence of Warrants Issued on September 18, 2000, and October 5, 2000.

The Commonwealth and Defendant agree that the warrants entered by the court were intended to ensure the presence of Defendant at all hearings but did not act to extend the court's jurisdiction to revoke [p. 5] Defendant's suspended sentence as Defendant's probationary period has already expired.

The court expressed concern, however, as to whether the existence of such warrants allowed the court to retain continuing jurisdiction over Defendant.

The first warrant, in the amount of \$600.00, was issued on September 18, 2000, for

Defendant's failure to appear at the September 14, 2000, review hearing. The second warrant, in the amount of \$700.00, was issued on October 5, 2000, as there was probable cause to believe that Defendant was in violation of the terms and conditions of his probation. On October 20, 2000, Defendant was brought before the court and the court entered a bail order whereby Defendant was to be released upon posting \$100.00 cash bail.

The court finds that the warrants issued on September 18, 2000, and October 5, 2000, do not act to give the court continuing jurisdiction to revoke Defendant's suspended sentence after the expiration of Defendant's probationary period. *See United States v. Hill*, 719 F.2d 1402, 1405 (9<sup>th</sup> Cir. 1983) (The issuance of a bench warrant after a probation violation and shortly before the running of the probationary period does not toll the probationary period and give the government unlimited leisure in which to arrest a defaulting probationer). As such, the court lacks jurisdiction to revoke Defendant's suspended sentence. Accordingly, the Commonwealth's motion to withdraw the motion to revoke probation is **GRANTED**.

#### V. CONCLUSION

For the foregoing reasons, the Commonwealth's motion to withdraw the motion to revoke probation is **GRANTED**. The court notes, however, its disappointment with the lack of diligence on the part of the Office of the Attorney General in failing to properly notice and serve a motion to revoke probation in a timely fashion allowing a revocation hearing to take place before a defendant's probationary period expires. The decisions of this court and the plain language of 6 CMC § 4113 clearly require such action on the part of the Office of the Attorney General to ensure that defendants convicted of crimes against the Commonwealth abide by the conditions as ordered by the court.

So ORDERED this 10<sup>th</sup> day of January, 2001.

/s/  
JUAN T. LIZAMA, Associate Judge