

THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN)
MARIANA ISLANDS,)
)
Plaintiff,)
)
v.)
)
ALFONSO F. RIUMD,)
)
Defendant.)
_____)

Criminal Case No. 01-0194

ORDER

I. PROCEDURAL BACKGROUND

This matter came before the court on April 27, 2001, in Courtroom 220A at 3:30 p.m. on Defendant's Application for Bail Modification. Chief Public Defender Massood Karimipour, Esq., appeared on behalf of the Defendant, Alfonso F. Riumd. Assistant Attorney General Elaine A. Paplos, Esq., appeared on behalf of the Commonwealth. The court, having heard and considered the arguments of counsel and being fully informed of the premises, now renders its decision.

II. FACTS

On April 24, 2001, Defendant Alfonso F. Riumd (Defendant) was involved in a incident in which it is alleged that he threatened another individual, Ms. Maria Seman, with a knife. [p. 2]

On April 25, 2001, the Commonwealth filed an Information charging Defendant with the following alleged offenses: (1) Assault with a Dangerous Weapon, in violation of 6 CMC § 1204(a); (2) Assault and Batter, in violation of 6 CMC § 1202(a); (3) Disturbing the Peace, in violation of 6 CMC § 3101(a); and (4) Resisting Arrest, in violation of 6 CMC § 1434(a).

FOR PUBLICATION

Also on April 25, 2001, Defendant came before the court for a bail hearing. The court imposed the following conditions for Defendant's release: (1) the posting of five thousand dollars (\$5,000.00) cash bail; (2) a promise to return to Court whenever required to do so; (3) a promise by Defendant that he shall obey all Commonwealth laws; and (4) a promise by Defendant to keep all appointments with his attorney.

On April 26, 2001, Defendant filed an Application for Bail Modification pursuant to Com. R. Crim. P. 46(a)(4) asserting that twenty four (24) hours had passed since the court first imposed the aforementioned bail conditions and attesting to the fact that Defendant was unable to post five thousand dollars (\$5,000.00) cash bail. Defendant proposed that he be released to a third party custodian and that Sinforosa Seman Hapdei be appointed the third party custodian.

On April 27, 2001, the Commonwealth filed a self-styled "Motion to Deny Bail Modification" asserting that the proposed third party custodian is not acceptable due to the existence of an outstanding bench warrant in a traffic matter. The Commonwealth's "Motion" further asserts that Defendant's Application for Bail Modification should be stricken because the Commonwealth was only given twenty four (24) hours notice of the hearing and did not, therefore, have an opportunity to diligently oppose such application.

III. ISSUE

Whether Com. R. Crim. P. 46(a)(4) permits Defendant to notice an Application for Bail Modification for hearing upon twenty four hours notice to the Commonwealth where Com. R. Crim. P. 45(d) mandates that written motions and notice of the hearing thereof shall be served not later than five (5) days before the time specified for the hearing. [p. 3]

ANALYSIS

The Commonwealth, in a self-styled "Motion to Deny Bail Modification," asserts that Defendant's Application for Bail Modification should be stricken because the Commonwealth was only given twenty four (24) hours notice of the hearing and did not, therefore, have an opportunity to diligently oppose such application. The Commonwealth contends that Com. R. Crim. P. 45(d)

requires five (5) days notice and that a hearing may only be conducted on twenty four (24) hours notice if Defendant files an *ex parte* motion to shorten time and shows cause as to why the five (5) day period set forth at Com. R. Crim. P. 45(d) should not be enforced.

Pursuant to Com. R. Crim. P. 45(d):

A written motion, other than one which may be heard *ex parte*, and notice of the hearing thereof shall be served, not later than five (5) days before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown such an order may be made on *ex parte* application . . .

See Com. R. Crim. P. 45(d).

Defendant, however, asserts that such a reading of Com. R. Crim. P. 45(d) disregards the plain language of Com. R. Crim. P. 46(a)(4) which governs instances in which a defendant is unable to meet the bail conditions imposed by the court.

Pursuant to Com. R. Crim. P. 46(a)(4):

A person for whom conditions of release are imposed and who after 24 hours from the time of the release hearing continues to be detained as a result of his/her inability to meet the conditions of release, **shall, upon application, be entitled to have the conditions reviewed by the judge who imposed them.** Unless the conditions of release are amended and the person is thereupon released, the judge shall set forth in writing the reasons for requiring the conditions imposed . . .

See Com. R. Crim. P. 46(a)(4) (emphases added).

Analysis of a statute must begin with the plain language of the statute. A basic principle of statutory construction is that the language must be given its plain meaning. *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362, 368 (1990); *Nansay Micronesia Corp. v. Govendo*, 3 N.M.I. 12, 18 (1992); *Govendo v. Micronesian Garment Manufacturing Inc.*, 2 N.M.I. 272, 284 (1991); *Estate of Faisao v. Tenorio*, 4 N.M.I. 260, 265 (1995); *Office of the Attorney General v.*

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Deala, 3 N.M.I. 110, 117 (1992); *King v. Board of Elections*, 2 N.M.I. 398, 403 (1991) (When the language is clear, the court will not construe it contrary to its plain meaning.); *Commonwealth Ports Auth. v. Hakubotan Saipan Ent., Inc.*, 2 N.M.I. 212, 221 (1991); *In Re The Estate of Rofag*, 2 N.M.I. 18, 29 (1991) (It is therefore necessary to give [language] the meaning that the legislature

intended.); *Commonwealth v. Nethon*, 1 N.M.I. 458 (1990); and *Commonwealth v. Hasinto*, 1 N.M.I. 377, 382 (1990).

The plain language of Com. R. Crim. P. 46(a)(4) states “[a] person for whom conditions of release are imposed and who after 24 hours from the time of the release hearing continues to be detained . . . **shall, upon application, be entitled** to have the conditions reviewed by the judge who imposed them.” Com. R. Crim. P. 46(a)(4). “Unless the context otherwise indicates[,] the use of the word ‘shall’ . . . indicates a mandatory intent.” SUTHERLAND, STATUTORY CONSTRUCTION § 25.04 (4th ed. 1985), *see also Aquino v. Tinian Cockfighting Board*, 3 N.M.I. 284, 292 (1993) (statutory term “shall” creates duty and is mandatory). As such, the court finds that when a defendant has been detained for a period of twenty four hours and is still unable to meet the conditions imposed for that defendant’s release then the defendant is entitled to make an application to the court for a modification of the bail conditions.

Furthermore, the court notes that the language of Com. R. Crim. P. 46(a)(4) makes no mention of any requirement that such motion be in writing. Accordingly, the court finds that current procedure employed by this court in entertaining applications for bail modification with only twenty four hours notice to the Commonwealth is a proper procedure and notes that it shall remain the practice of the court to hear such motions upon twenty four hours notice. The court will, however, continue to require that defense counsel notify the Commonwealth regarding any such application for bail modification as soon as practicable after the decision to pursue such an application is made.

V. CONCLUSION

For the foregoing reasons, the court finds that when a defendant has been detained for a period of twenty four hours and is still unable to meet the conditions imposed for that defendant’s release [p. 5] then the defendant is entitled to make an application to the court for a modification of the bail conditions.

Furthermore, the court notes that the language of Com. R. Crim. P. 46(a)(4) makes no mention of any requirement that such motion be in writing. Accordingly, the court finds that current procedure employed by this court in entertaining applications for bail modification with only twenty

four hours notice to the Commonwealth is a proper procedure and notes that it shall remain the practice of the court to hear such motions upon twenty four hours notice. The court will, however, continue to require that defense counsel notify the Commonwealth regarding any such application for bail modification as soon as practicable after the decision to pursue such an application is made.

So ORDERED this 1 day of May, 2001.

/s/
JUAN T. LIZAMA, Associate Judge