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3 **FOR PUBLICATION**

4
5 **IN THE SUPERIOR COURT**
6 **OF THE**
7 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

8 COMMONWEALTH OF THE NORTHERN)
9 MARIANA ISLANDS)

Plaintiff,)

v.)

10 SOTERO TEREGEYO)

Defendant.)

CRIMINAL CASES NO. 97-0140,
97-0150 TRAFFIC CASES NO. 92-8218,
96-6670, 95-9167

ORDER GRANTING IN PART, AND
DENYING IN PART MOTION TO
RECONSIDER MOTION TO
DISCHARGE DEFENDANT
FROM PROBATION

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13 **I. INTRODUCTION**

14 This matter came on for a hearing on June 10, 2002, at 1:30 p.m. on Defendant SOTERO
15 TEREGEYO'S [hereinafter Defendant] Motion to Reconsider Motion to Discharge Defendant from
16 Probation. Assistant Public Defender Douglas W. Hartig appeared on behalf of Defendant, and
17 Assistant Attorney General Kevin Lynch appeared on behalf of the Commonwealth of the Northern
18 Marian Islands [hereinafter Commonwealth]. The Court having thoroughly reviewed the briefs, exhibits,
19 and records, and having heard and considered all arguments of counsel, now renders its written
20 decision.

21 **II. FACTS**

22 For clarity, this Order will use bold type to designate which cases are being referred to, i.e.,
23 criminal or consolidated traffic cases, and the respective probationary periods applicable to each.
24 Although Defendant's criminal and traffic cases were never consolidated by order, it appears from the
25 record that as a matter of convenience to the parties, and for expedition of the judicial process, the
26 court has heard issues pertaining to both the criminal cases and the traffic cases at some of the same
27 hearings since on or about February 17, 2000. *See Commonwealth v. Teregeyo*, Crim. Nos. 97-
28 0104, 97-0150, Traffic Nos. 92-8218, 96-6670, 95-9167 (N.M.I. Super. Ct. February 17, 2000)

1 ([Unpublished] Order). This appears to have created some confusion as to the duration of the
2 probationary periods respecting the criminal sentencing, and the sentencing for the consolidated traffic
3 violations.

4 **A. The criminal cases (97-0140 and 97-0150)**

5 On September 2, 1997, pursuant to the plea agreement with the Commonwealth Attorney
6 General's Office, Defendant plead guilty to counts I, III, IV, VI, VIII, IX, XI and XII (seven counts of
7 forgery and one count of conspiracy) in exchange for dismissal of the remaining counts in the
8 information in Criminal Cases Nos. 97-0140 and 97-0150. Defendant was sentenced to the maximum
9 term allowable by law on each count. *See* 6 CMC § 1701(c); 6 CMC § 304(b).

10 Defendant was sentenced to five years jail on each count, all to run concurrently in jail, all
11 suspended, except one year in jail for each count, all to run concurrently. *See* 6 CMC 4113(a). The
12 "*suspended sentence was conditioned on*" the following terms and conditions:

13 (a) *one year in jail, without parole in jail;*

14 (b) *four years of active probation;*

15 (c) no law violations, excluding traffic infractions;

16 (d) restitution to be made as follows: \$1,700 to Jae Soung Kim d/b/a New Star Market, \$200
17 to Jin Myong Kim d/b/a Sugar King Market, \$300 to Young Hee Park d/b/a Garapan Market,
18 \$200 to Happy Market II, \$300 to Cho Mi Young d/b/a Happy Market (San Jose), \$1,400 to
19 Romeo Reyes, and \$347 to Ji Sun d/b/a Oa Di' Enterprises.

20 *See* Plea Agreement (August 29, 1997) at 2-3 (emphasis added).

21 On September 21, 1999, the Commonwealth filed a Motion to Revoke Defendant's probation
22 for Criminal Cases Nos. 97-0140 and 97-0150. The motion was heard on February 9, 2000, and the
23 court issued an order that agreed to accept the stipulation of the parties, conditioned on the payment of
24 outstanding restitution, and reaffirmed the fact that **Defendant's probation, regarding Criminal**
25 **Cases Nos. 97-0140 and 97-0150 was to expire on September 2, 2002.** *See* [Unpublished] Order
26 as to Defendant Sotero L. Teregeyo (February 9, 2000); *see also* Status Report from Probation Office
27 (September 20, 1999) ("HIS PROBATION EXPIRES ON SEPTEMBER 2, 2002."). This Court
28 finds that there is presently no motion for revocation outstanding on the criminal cases.

1 On February 1, 2001 Defendant failed to appear at a review hearing pertaining to Criminal
2 Cases Nos. 97-0140 and 97-0150 and a bench warrant was issued for his arrest with bail set for the
3 amount of restitution owed, \$3,747. *See* [Unpublished] Order (February 1, 2001). On February 21,
4 2001, Defendant was ordered to pay \$200 per month on the outstanding \$3,747 restitution. *See*
5 [Unpublished] Order (February 21, 2001).

6 **B. The consolidated traffic cases (91-0594, 92-8218, 95-9167, and 96-6670)**

7 Defendant also had four traffic violations from a period spanning the years of 1991 thru 1996.
8 *See* Traffic Case Nos. 96-6670, 95-9167, 92-8218, and 91-0594 [hereinafter consolidated traffic
9 cases]. These violations were consolidated on February 22, 2000. *See* [Unpublished] Order
10 (February 22, 2000). Defendant plead guilty to the consolidated traffic cases offenses on May 11,
11 2000. Traffic Case No. 91-0954 was dismissed. *See* [Unpublished] Judgment and Commitment Order
12 (May 11, 2000).

13 Defendant was sentenced to 30 days in jail, suspended, with **probation for one year**
14 conditioned on payment of a fine in the amount of \$350 payable at the rate of \$35 per month beginning
15 on June 6, 2000. *Id.*

16 On May 4, 2001, for noncompliance with the payment of his traffic fines, **Defendant's**
17 **probation, as to the consolidated traffic cases, was extended, by consent, for 90 days.** *See*
18 [Unpublished] Order (May 4, 2001). On July 25, 2001, a bench warrant was issued for Defendant's
19 failure to appear for a review hearing regarding the consolidated traffic cases. Bail was set at \$240, the
20 amount remaining in traffic fines. *See* [Unpublished] Order (July 25, 2001). There is nothing on record
21 to show that the bench warrant was ever executed.

22 At this point, the court heard no more from the Defendant for a while. It is not clear why
23 Defendant was not immediately apprehended pursuant to the bench warrant and brought before the
24 court to answer for his failure to appear. The Defendant's original probationary period, as to the
25 consolidated traffic cases, plus the **additional 90 days** added on by Order dated May 4, 2001, made
26 his **extended probationary period expire on August 11, 2001.** *See* [Unpublished] Order (May 4,
27 2001).

28 **C. Both the criminal and the consolidated traffic offenses**

1 Finally, on November 29, 2001, Defendant appeared at a review hearing where the court
2 ordered Defendant's **probation extended four months, as to the consolidated traffic cases**, and
3 affirming the balance owing on the traffic fines (\$140), and the criminal restitution (\$3,747). At this time,
4 Defendant consented to the **four-month extension of the probationary period concerning the**
5 **consolidated traffic cases**. See [Unpublished] Order (Dec. 5, 2001).

6 On December 17, 2001, Defendant filed a Motion to Discharge Defendant From Probation
7 contending that both probationary periods had expired, and that the court had lacked jurisdiction in the
8 first instance to extend Defendant's probation as to the consolidated traffic cases, even though
9 Defendant had consented. Defendant also contended that the probationary period concerning the
10 criminal case had expired. See Motion to Discharge Defendant From Probation (December 7, 2001) at

11 1.

12 III. ISSUES

13 A. Whether the probationary period applicable to the criminal cases has expired.

14 B. Whether the probationary period applicable to the consolidated traffic cases, as
15 extended by Defendant's consent, has expired.

16 IV. ANALYSIS

17 A. Probationary period for the criminal cases

18 In *Commonwealth v. Oden*, 3 N.M.I. 189, 198 (1992), *aff'd* 19 F.3d 26 (9th Cir 1994), the
19 Supreme Court construed "the maximum term of sentence" to mean "the combined length of any prison
20 term plus any suspended portion (and resulting probation) *which is to follow the prison term.*"
21 (Emphasis added.) Therefore, when imposing a sentence that includes incarceration and probation, the
22 court may not exceed the maximum term under the statute. *Id.*

23 The defendant was sentenced to five years in jail on each count, the maximum allowable by the
24 criminal statutes to which he plead guilty. See 6 CMC §1701(b)(2) and (3); 6 CMC § 303(a)(2).

25 Defendant contends that *Oden* is not the current state of the law in the CNMI. See Motion to
26 Reconsider Motion to Discharge Defendant from Probation (May 15, 2002) at 2. He argues that
27 *Commonwealth v. Itibus*, 1997 MP 10, 5 N.M.I. 78 controls in this case. *Itibus* stands for the
28 proposition that the Superior Court may, as a condition of a suspended sentence, order incarceration

1 for the defendant. In *Itibus*, the defendant appealed the Superior Court's suspension of his sentence in
2 which he was ordered to "supervised probation" for a one year, six month period and to *600 hours of*
3 *detention on the weekends. Id.* at 1 (emphasis added). The Supreme Court concluded that the period
4 of incarceration in that case was a *condition* of the defendant's suspended sentence while on probation.

5 Defendant's reliance on *Itibus* is misplaced. The distinguishing feature of the present case is that
6 Defendant was ordered to serve "1 year in jail, *without parole*; and 4 years of *active probation*." See
7 [Unpublished] Judgment and Commitment Order (September 2, 1997) (emphasis added). The fact that
8 the Superior Court designated the incarceration to be "without parole" leads this Court to the
9 conclusion that the incarceration in this case was not a condition of probation, but rather a condition of
10 the suspended sentence itself. The "without parole" language coupled with the fact that the Judgment
11 and Commitment Order modified the length of probation with the word "active" leads this Court to
12 conclude that the only reasonable construction of Defendant's sentence is that he was required to serve
13 one year in prison, without the supervision of the Probation Department, followed by four years of
14 supervised probation. The combined incarceration period and probationary period does not exceed the
15 rule set forth in the *Oden* decision, as the maximum sentence allowed for each count of Defendant's
16 charges was five years. Section 4113(a) of Title 6 of the Commonwealth Code has no bearing on this
17 case.

18 Therefore, this Court reaffirms its earlier conclusion, as to the criminal probation period, and
19 once again, clarifies that **Defendant's probationary period for the criminal sentence is to end on**
20 **September 2, 2002.** See [Unpublished] Order Denying Discharge from Probation (April 30, 2002).

21 **B. Probationary period for the consolidated traffic cases**

22 Commonwealth Rule of Criminal Procedure 32.1(b) states, "[a] hearing and assistance of
23 counsel are required before the terms or conditions of probation can be modified, unless the relief
24 granted to the probationer upon his/her request or the court's own motion is favorable to him/her."
25 Com. R. Crim. P. 32.1(b).

26 In the present case, Defendant stood to have his probation revoked several times for the
27 nonpayment of his traffic fines. Defendant consented to the extension of his probation as an alternative
28 to revocation of his suspended sentence on two separate occasions. See *supra* Part II B. The relief

1 granted to the Defendant was no doubt favorable to him as it kept him out of jail. Furthermore, the
2 Defendant has benefitted from the assistance of counsel throughout these matters.

3 On July 25, 2001, a bench warrant, which was neither executed nor quashed, was issued for
4 Defendant's failure to appear. On August 11, 2001, the extended probationary period as to the
5 consolidated traffic offenses ended. The fact that the termination of the probation period took place
6 during the time that a bench warrant for Defendant's arrest was outstanding, does not prevent the
7 probationary period from ending, absent a revocation order from the court. In this case, it seems as
8 though the Defendant has further benefitted from the government's oversight.

9 Defendant's assertion that the court lacks jurisdiction to extend or revoke probation after the
10 probation period has ended is correct. *See Commonwealth v. Odoshi*, Crim. No. 98-4100 (N.M.I.
11 Super. Ct. September 14, 1999) ([Unpublished] Order); *see also Commonwealth v. Hemley*, Crim.
12 No. 91-0146 (N.M.I. Super. Ct. December 22, 1994) (Decision and Order on Revocation of
13 Probation). Notwithstanding Defendant's consent to extend his probationary period, as to the
14 consolidated traffic cases, for four months, on November 29, 2001, this Court still finds the extension
15 invalid. Defendant's **probationary period as to the consolidated traffic cases, as extended to**
16 **August 11, 2001, has ended.** There is still, however, a bench warrant outstanding for Defendant for
17 his failure to appear at the July 25, 2001 hearing, and it may be executed.

18 V. CONCLUSION

19 For the reasons stated above, Defendant's Motion to Reconsider Motion to Discharge Defendant
20 from Probation is **DENIED** as to the probationary period in Criminal Case No. 97-140, and
21 Defendant **remains on probation until September 2, 2002.**

22 Defendant's Motion to Reconsider Motion to Discharge Defendant from Probation is hereby
23 **GRANTED** as to the consolidated traffic cases.

24 The bench warrant, issued by order on July 25, 2001, for Defendant's arrest is still outstanding.

25 A status conference for this matter is set for July 1, 2002, at 1:30 p.m. in courtroom 217A.

26 **SO ORDERED** this 14th day of June 2002.

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/s/ Juan T. Lizama
JUAN T. LIZAMA, Associate Judge