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2 **FOR PUBLICATION**

3
4 **IN THE SUPERIOR COURT**
5 **OF THE**
6 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

7 COMMONWEALTH OF THE)
8 NORTHERN MARIANA ISLANDS,)
9 Plaintiff,)
10 vs.)
11 ALEX A. CAMACHO AND SYDNEY T.)
12 CAMACHO)
13 Defendants.)

CRIMINAL CASE NO. 96-0337

**ORDER GRANTING
PLAINTIFF'S MOTION
TO MODIFY CONDITIONS
OF RELEASE**

14
15 **I.**

16 **INTRODUCTION**

17 This matter came before the Court at 9 a.m. on June 19, 2002. The Commonwealth was
18 represented by Assistant Attorney General Aaron Romano. Defendant Alex Camacho was
19 represented by Anthony Long. Defendant Sydney Camacho was represented by Joseph Arriola.

20 **II.**

21 **FACTUAL BACKGROUND**

22 On May 29, 2002, a jury found Defendants guilty of involuntary manslaughter and aggravated
23 assault and battery.

24 On June 3, 2002, the Commonwealth moved to modify bail, and requested that Defendants be
25 remanded into immediate custody pursuant to 6 CMC § 6402.

26 **III.**

27 **DISCUSSION**

28 In a previous Order, this Court ruled that a plain reading of 6 CMC § 6402 does not give the
Court discretion to grant bail after conviction until a stay of the sentence has been executed. *See*

1 *Commonwealth v. Sablan*, Crim. No. 00-0527C (N.M.I. Super Ct. May 31, 2002) (Order Granting
2 Plaintiff's Motion to Modify Conditions of Release). The *Sablan* court noted a conflict between 6
3 CMC § 6402 and Rule 46(c) of the Commonwealth Rules of Criminal Procedure, but determined that
4 the statute prevailed over the rule.¹ *Id.*

5 **A. Defendants' Reliance on *Babauta***

6 Defendants rely heavily on *Babauta v. Superior Court*, 4 N.M.I. 309 (1995) *aff'd* 106 F.3d
7 406 (9th Cir. 1997) in their opposition to the Commonwealth's Motion to Modify Conditions of
8 Release. Defendants encourage this Court to find that a Commonwealth. Rule of Criminal Procedure
9 prevails anytime it conflicts with a statute of criminal procedure in the Commonwealth Code. This Court
10 has considered *Babauta* and concludes that Defendants have interpreted this case too broadly.

11 *Babauta* is distinguishable for several reasons. First, *Babauta* cites a letter written by the Chief
12 Justice in which he proposed that certain provisions of the Trust Territory Code [hereinafter TTC] be
13 repealed which would otherwise be redundant with new Rules of Criminal Procedure. *Babauta*, 4
14 N.M.I at 312 n.22. This suggests that certain, specific provisions, were intended to be repealed rather
15 than an entire statutory scheme.

16 Next, *Babauta* explains how the Legislature passed House Bill No. 350, which repealed
17 sections of Title 12 of the TTC that were 'inconsistent' with the new Court Rules. *Id* at 312. However,
18 this was passed only after inconsistencies were identified between the TTC and the new rules. The
19 remaining TTC was codified into the Commonwealth Code, which governs today. *Id.* Among these
20 provisions is 6 CMC § 6402.

21 Furthermore, *Babuata* concerned 6 CMC.§ 6303. The Supreme Court noted that section 6303
22 was "inadvertently overlooked when the law governing criminal procedure was changed from statutory
23

24 ¹ Commonwealth Code § 6402 provides that "[a]fter conviction bail may be allowed only if a stay of
25 execution of the sentence has been granted and only in the exercise of discretion by a court authorized to order a
26 stay or by a judge thereof." 6 CMC § 6402(b).

27 Rule 46(c) of the Commonwealth Rules of Criminal Procedure provides that "[a] person who has been
28 convicted of an offense and is . . . awaiting sentence . . . shall be treated in accordance with the provisions of Rule
46(a)(1) through (6)." Com. R. Crim. P. 46(c). Generally, the provisions of Rule 46(a)(1) through (6) provide criteria for
determining conditions of release that will reasonably assure appearance of the person charged.

1 to rule-based form in 1983." *Id.* at 313. Based on legislative history, the Court concluded that the
2 Rules of Criminal Procedure controlled over the statute. *See Id.* The Court said that the prevailing rule
3 was 'intended' to be replaced in the transition from the TTC to the new criminal procedure rules and
4 Commonwealth Code. *Id.* However, *Babauta* did not identify any other section of the Commonwealth
5 Code that was intended replaced. Neither did the case identify any other section of the
6 Commonwealth Code that was inadvertently overlooked.

7 In addition, 6 CMC § 6402 is not a misplaced statute codified by inadvertence. Section 6402
8 is part of an entire chapter addressing bail. *See* 6 CMC §§ 6401-6406. Even following the period that
9 the legislature identified inconsistencies - this chapter remains in our statutory framework.

10 Finally, a comparison of the former TTC chapter addressing bail with the current CMC chapter
11 on bail indicates that, even though new rules were adopted, there existed some level of
12 awareness regarding 6 CMC § 6402 (formally 12 TTC § 252) before the new bail chapter was
13 endorsed. For example, the former TTC chapter on bail contained a passage addressing "form and
14 disposition of bail" and the "sufficiency of sureties." *See* 12 TTC § 255. The adopted CMC chapter on
15 bail does not include this former TTC provision. *See* 6 CMC §§ 6401-6406. Indeed, none of the
16 current sections of the adopted CMC incorporate this TTC section. The same fate could have befallen
17 6 CMC § 6402, formally 12 TTC § 252. Instead, the legislature included it in our current statutes.

18 **B. This Court's Interpretation of *Babauta***

19 This Court interprets *Babauta* as limited, in that 6 CMC § 6303, alone, was overlooked by the
20 Legislature. This Court does not find that *Babauta* always gives Rules of Criminal Procedure priority
21 over statutes.

22 **C. Conclusion**

23 The Court does not need to further examine the motives of the Legislature where, as here
24 a reasonable interpretation of the statute is clear on its face.

25 It is important to remember that Defendants have been convicted of killing a human being.
26 They have been found guilty by a jury. Their liberty has been deprived only after due process of law
27 and thus they no longer enjoy the presumption of innocence.

28 This Court will follow the mandate of the statute adopted by the Legislature. Under 6 CMC §

1 6402, the Court does not have the power to grant bail after a conviction, until there has been "a stay of
2 execution of the sentence." *See* 6 CMC § 6402(b). At present, there is no sentence from which a stay
3 is eligible. Therefore, 6 CMC § 6402 is not invoked and after conviction bail is not allowed.

4 **IV.**

5 **CONCLUSION**

6 The Commonwealth's Motion to Modify Conditions of Release is **GRANTED**. Defendants
7 Alex Camacho and Sydney Camacho are hereby **ORDERED** into custody pending sentencing and
8 shall report to the Department of Corrections on or before 8:00 a.m. on June 24, 2002.

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10 So **ORDERED** this 20th day of June 2002.

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12
13 /s/ David A. Wiseman
14 DAVID A. WISEMAN, Associate Judge
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