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FOR PUBLICATION

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

COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS,

Plaintiff,

v.

GEORGE MANGLONA and
CLASLEY NGESKEBEY,

Defendants.

CRIMINAL CASE NO. 02-0126(T)

**ORDER DENYING
DEFENDANT
GEORGE MANGLONA'S
MOTION FOR DISMISSAL**

This matter came on for a hearing on Defendant's *Motion to Dismiss* on June 13, 2003, at 9:00 a.m. at the Commonwealth Superior Court at Tinian. The Government was represented by Kevin A. Lynch, Assistant Attorney General. The Defendant appeared with counsel, Douglas Hartig, Assistant Public Defender.

Defendant's *Motion to Dismiss* is based on Defendant's claim that the Government did not negotiate a dismissal of his case in good faith, and as a consequence, the trial was delayed after several continued status conferences.

Defendant's grounds for dismissal are that he was enlisting in the Army and already had a date to report to a "Marine [sic] boot camp," subject to the dismissal of the case. Defendant alleges that the Government assured him that they would check with the Army recruiter for verification, and that they never did so. Although Defendant states that at least one Government attorney stated that he would consider the dismissal after discussing and verifying Defendant's enlistment, there was never any commitment from the Government to dismiss the case, but rather, only that it would be considered once they checked with the Army recruiter.

This Court has supervisory power over any Governmental misconduct; however, only three grounds

1 exist for a court's dismissal of a case in an exercise of supervisory power:

- 2 1. "to implement a remedy for the violation of a statutory or constitutional rights;"
- 3 2. "to preserve judicial integrity by ensuring that a conviction rests on
- 4 appropriate considerations validly before a jury;" and
- 5 3. "to deter future illegal conduct."

6 *United States v. Miller*, 4 F.3d 792, 795 (9th Cir. 1993); *United States v. Simpson*, 927 F.2d 1088, 1090
7 (9th Cir. 1991) (citing *United States v. Hasting*, 461 U.S. 499, 505, 103 S. Ct. 1974, 1978, 76 L. Ed. 2d
8 96, 104 (1983)).

9 Such power is to be exercised sparingly. *See, e.g., United States v. Isgro*, 974 F.2d 1091, 1097-99
10 (9th Cir. 1992); *see also United States v. King*, 200 F.3d 1207, 1214 (9th Cir. 1999) (quoting *United*
11 *States v. Owen*, 580 F.2d 365, 367 (9th Cir. 1978)) (Dismissal of an indictment under the court's supervisory
12 power is "a harsh, ultimate sanction' which [is] 'more often referred to than invoked'").

13 In order to warrant dismissal, there must be:

- 14 1. flagrant governmental misbehavior, and
- 15 2. substantial prejudice to the defendant.

16 *United States v. Kearns*, 5 F.3d 1251, 1253 (9th Cir. 1993) (citation omitted).

17 Actual prejudice must be shown. *Isgro*, 974 F.2d at 1097 (citation omitted). Defendant failed to
18 demonstrate how the delay prejudiced his case. This essential requirement is a prerequisite for the
19 consideration of dismissal motions. Presumably, the Defendant is in the same position he was in before the
20 series of continuances. The Court does not find substantial nor actual prejudice to the Defendant, nor does the
21 Court find any Governmental misbehavior that would warrant a sanction in this case.

22 Defendant's motion for dismissal of this case is hereby **DENIED**.

23 **SO ORDERED** this 24th day of June 2003.

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/s/ _____
DAVID A. WISEMAN, Associate Judge

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