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For Publication

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

**COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS,**)
)
Plaintiff,)
)
v.)
)
CHEN, SHUANGLAN)
(n.k.a. SHUANGLAN CHEN SABLAN),)
)
Defendant.)
_____)

Criminal Case No. 01-0277

**ORDER GRANTING DEFENDANT'S
MOTION TO WITHDRAW GUILTY
PLEA**

THIS MATTER came for hearing on March 9, 2003 on Defendant's "Motion to Withdraw Guilty Plea." Counsel for both sides were present and were heard. Having reviewed the arguments of both sides, the Court is prepared to rule.

FACTUAL BACKGROUND

On June 12, 2001, the Commonwealth of the Northern Mariana Islands [hereinafter Government] filed an information charging Ms. Sablan with Promoting Prostitution in the Second Degree in violation of 6 CMC § 1344(d) and Prostitution in violation of 6 CMC § 1343. On February 14, 2002, the Government and the Defendant, Shuanglan Chen Sablan, reached a plea bargain agreement in which the Government agreed to drop the Prostitution charge in exchange for Ms. Sablan's guilty plea to the charge of Promoting Prostitution in the Second Degree. Ms. Sablan would then be sentenced to one year imprisonment, with credit for time served, all suspended on condition that she pay a \$1,000 fine and an assessment under 6 CMC § 1346(e) of \$2,000.

This Court accepted the guilty plea on February 14, 2002. In so doing, the Court found that (1) the Defendant's decision to plead guilty was freely, voluntarily and intelligently made; (2) the Defendant had

1 the advice of competent counsel with whom she said she was satisfied; (3) the Defendant understood the
2 consequences of her plea; and (4) there was a factual basis for the plea. The Court imposed the agreed
3 upon sentence and issued a judgment and commitment order the following day.

4 On August 19, 2002, the Office of the Attorney General and the Division of Immigration Services
5 filed a civil action pursuant to 3 CMC §§ 4340-4341, asking the court to order Ms. Sablan to show cause
6 why she should not be deported. (The motion was not filed with this Court, but rather with the court of
7 Associate Judge David A. Wiseman, who generally hears immigration matters in the Commonwealth). Ms.
8 Sablan is a legal resident of Saipan and is married to a U.S. Citizen. However, her conviction for
9 Promoting Prostitution in the Second Degree is grounds for deportation under 3 CMC § 4340. The
10 Government representative in both the criminal action and the deportation action was Assistant Attorney
11 General Kevin Lynch.¹ Upon learning that her guilty plea had the additional consequence of subjecting her
12 to deportation, Ms. Sablan filed the instant motion seeking to withdraw that plea.

13 ISSUES PRESENTED

- 14 1. In the Commonwealth, are the due process rights of a resident alien violated when she is not
15 informed that pleading guilty to promoting prostitution could subject her to deportation?
- 16 2. In the Commonwealth, is it “manifestly unjust” to allow a resident alien to plead guilty to promoting
17 prostitution without informing her that her plea will subject her to deportation where the Defendant
18 is a legal resident and married to a U.S. citizen?

19 LEGAL CONCLUSIONS

20 A. Due Process

21 It is well settled that accepting a guilty plea will violate a defendant’s right to due process if the plea
22 is not made voluntarily and intelligently. *Torrey v. Estelle*, 842 F.2d 234, 235 (9th Cir. 1988). To ensure
23 that a defendant has the information required to make an informed decision, the trial judge has a duty to
24 describe for the defendant, the likely consequences of a guilty plea. However, because the decision to
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27 ¹ Mr. Lynch represented the Government during the initial criminal proceedings and in the deportation hearing.
28 However, another attorney from the Attorney General’s office, Justin J. Wolosz, has been representing the Government
in the instant motion.

1 plead guilty may have a wide range of consequences,² requiring a court to inform a criminal defendant of
2 every possible negative legal consequence of pleading guilty “would impose an unmanageable burden on
3 the trial judge and only sow the seeds for later collateral attack.” *Fruchtman v. Kenton*, 531 F.2d 946,
4 949 (9th Cir. 1976) (quotation and citation omitted). Therefore, most U.S. courts have determined that
5 a trial judge need only advise a defendant of the “direct consequences” of a guilty plea. *United States v.*
6 *Amador-Leal*, 276 F.3d 511, 514 (9th Cir. 2002). The court is not obligated to inform a defendant of “all
7 the possible collateral consequences.” *Id.*

8 In advising a criminal defendant of the direct consequences of pleading guilty, a court must first
9 determine which consequences are direct and which are merely collateral. The Ninth Circuit has suggested
10 two slightly different tests for determining this question. One test simply limits the scope of “direct
11 consequences” to those that the court itself can impose as part of the criminal sentence. *See United States*
12 *v. Littlejohn*, 224 F.3d 960, 965 (9th Cir. 2000) (holding that a consequence is collateral if some
13 individual or entity, other than the sentencing court, must act before the consequences occur). The other
14 test categorizes consequences based on the how likely it is that the consequence will follow from the guilty
15 plea. “The distinction between a direct and collateral consequence of a plea turns on whether the result
16 represents a definite, immediate and largely automatic effect on the range of the defendant’s punishment.”
17 *Torrey*, 842 F.2d at 236 (quotation and citation omitted).

18 Regardless of which test is applied, most courts have concluded that immigration-related
19 consequences are collateral. *See, e.g., Downs-Morgan v. United States*, 765 F.2d 1534, 1538 (11th
20 Cir. 1985). Indeed the division of the Commonwealth Superior Court assigned to handle immigration
21 matters has recently decided a case raising the same due process issue found in the instant matter. In
22 *Commonwealth v. Tang*, Crim. No. 01-0236 (N.M.I. Super. Ct. June 17, 2003) (Order Denying
23 Defendant’s Motion to Set Aside Guilty Plea), the defendant (a non-citizen) pled guilty to promoting
24 prostitution in the second degree. *Id* at 1. Defendant was not informed by the court of the potential
25 consequences to her immigration status of her guilty plea. *Id* at 2. Upon learning that the Government was
26 seeking to deport her, using her guilty plea as the grounds, she sought to have that plea set aside. *See id.*

27
28 ² In addition to the obvious possibility of fines and imprisonment, a defendant might lose the right to vote,
to receive aid under certain government programs, or, as in this case, be subjected to deportation proceedings.

1 Relying on much of the same case law discussed above, the *Tang* court denied the motion. *See id* at 2-7.³

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3 It seems then, that this Court is not posed with a difficult dilemma. The Court could not order Ms.
4 Sablan deported as part of her criminal sentence, so deportation is not a direct consequence of the guilty
5 plea in that sense. In addition, her deportation is not a direct consequence in the sense that it is a “definite,
6 immediate and largely automatic effect” of Ms. Sablan’s conviction. Her deportation is dependent both
7 on the Attorney General’s willingness to seek it and a judge’s willingness to grant it. Finally, the only case
8 law on point in the Commonwealth clearly suggests that this Court should deny Defendant’s motion.

9 Nonetheless, the Court will not do so. While certainly respectful and normally deferential to
10 decisions made by other divisions of the Superior Court, this Court is not bound by them. More
11 importantly, the Court sees significant differences between the immigration procedures in the rest of the
12 United States and the procedures used here. In the rest of the U.S., federal criminal proceedings are
13 handled by the criminal prosecution divisions of the Attorney General’s office and are heard by a federal
14 judge. Deportation proceedings are brought by a separate division, the Bureau of Citizenship and
15 Immigration Services (formerly the Immigration and Naturalization Service) and heard by an Immigration
16 Judge. *See* 8 U.S.C. §§ 1229, 1229a. In a practical sense, this means that the criminal cases and
17 deportation proceedings will be tried by entirely different sets of lawyers and heard by entirely different
18 panels of judges. This is important, because many of the courts who have decided against requiring
19 sentencing judges to notify a defendant of the immigration consequences of a guilty plea have cited the
20 independent nature of the deportation proceeding. *See, e.g., Amador-Leal*, 276 F.3d. at 516.

21 In the Commonwealth, the process is ostensibly the same as in the federal system. Criminal
22 prosecutions are handled by the Criminal Division of the Attorney General’s office, while deportation
23 actions are controlled by the Division of Immigration and the Attorney General’s office. However, in the
24 Commonwealth the actual prosecution of deportation actions is done by the same pool of lawyers and
25 heard by the same pool of judges as those who handle criminal cases. Indeed, in this case, both the
26 criminal matter and the deportation proceeding were handled by the same Assistant Attorney General.

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28 ³ The same court also reached the same decision, on essentially the same facts, in *Commonwealth v. Cai Hua Fei*, Crim. No. 02-0076 (N.M.I. Super. Ct. June 25, 2003) (Order Denying Defendant’s Motion to Set Aside Guilty Plea).

1 Like the federal system, deportation in the Commonwealth is a separate process. Unlike the federal
2 system, it is not a truly independent process.

3 The result is that the power of prosecutors is enormously and improperly enhanced. For example,
4 an unscrupulous prosecutor in the Commonwealth could use the promise of a relatively light sentence to
5 induce aliens to plead guilty to crimes that would subject them to deportation, with the intent that
6 deportation, not the criminal sentence, be the actual punishment for the crime alleged. Aliens, who plead
7 guilty under those circumstances, do not really make the decision “intelligently” unless they realize that
8 deportation (or at least the very real and immediate possibility of deportation) is a *de facto* part of their
9 sentence. While such an improper “indict and deport” scheme is also possible in the federal system, it
10 would require coordination between two different entities and separate sets of attorneys. In the
11 Commonwealth, a prosecutor can simply assign the job to himself.⁴ Conversely, it seems very possible that
12 a criminal defendant in the Commonwealth could reasonably insist upon and receive protection from
13 deportation as part of plea bargaining. Such a deal would be much more difficult in the federal system.
14 Given the close relationship between criminal prosecutions and deportation proceedings in the
15 Commonwealth, resident aliens considering a guilty plea have a right to be told that deportation might be
16 an unwritten part of their sentence.

17 This right is particularly important, because deportation amounts to forcibly, and likely permanently,
18 expelling someone from their chosen home. In this sense, deportation is much more onerous than other
19 “collateral” consequences of a criminal conviction. Given the severity of deportation and the lack of a truly
20 independent process for deciding to seek a deportation order in the Commonwealth, the Court concludes
21 that it is a violation of the right to due process to accept the guilty plea of a resident alien without first
22 informing such person of the adverse effect a criminal conviction would have on that person’s immigration
23 status. This Court erred in failing to so advise Ms. Sablan. Therefore, the Court must and does GRANT
24 her motion to withdraw her guilty plea on due process grounds.

25 **B. Manifest Injustice**

26 _____
27 ⁴ Of course, the Court recognizes that any individual prosecutor’s discretion is limited by the judgment and
28 supervision of superiors. However, the total number of decision-makers is quite small and there appears to be substantial
overlap between those who decide to bring criminal prosecutions and those who decide to bring deportation actions.

1 Ms. Sablan also sought to withdraw her guilty plea on the grounds that it would be manifestly unjust
2 not to allow her to do so. Under the Commonwealth Rules of Criminal Procedure 32(d) a guilty plea may
3 be set aside to “correct manifest injustice.” *See also, Commonwealth v. Cabrera*, 2. N.M.I. 311, 315-
4 16 (1991), *aff’d* 979 F.2d 854 (9th Cir. 1992) (unpublished decision). Ms. Sablan argues that it was
5 manifestly unjust to accept her guilty plea without informing her that she might face deportation as a result
6 of her conviction, especially since she had recently married a citizen and had been issued an “Immediate
7 Relative (IR) of a Non-alien” entry permit. Given the extreme nature of deportation as a sanction for
8 criminal conduct and Ms. Sablan’s particular situation, the Court must agree that it was manifestly unjust
9 to accept her guilty plea without first informing her of the immigration consequences of that decision. The
10 only possible correction for this injustice is to allow Ms. Sablan to withdraw her plea. Therefore, to correct
11 manifest injustice, the Court must and does GRANT Defendant’s motion to withdraw her guilty plea.

12 **CONCLUSION**

13 For the reasons stated above, the February 15, 2002 “Judgment and Commitment Order” in this
14 case is SET ASIDE and Defendant’s motion to withdraw her guilty plea is GRANTED.

15
16 SO ORDERED this 6th day of August 2003.

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19 /s/
20 JUAN T. LIZAMA, Associate Judge