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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.

JIN XING,

Defendant.

Criminal Case No. 02-0201

**ORDER DENYING PLAINTIFF'S
MOTION FOR DECLARATION OF
FORFEITURE**

THIS MATTER came on for hearing August 6, 2003 on the Government's motion for a declaration of forfeiture. The motion stems from an information filed July 15, 2002 in which the Defendant, Jin Xing was charged with a number of violent crimes, the most serious of which was Attempted Second Degree Murder. The Court allowed Mr. Xing to be released on bail upon a surety of \$10,000, \$1,000 of which had to be posted prior to release. Subsequently, on June 9, 2003, a plea agreement was reached, and Mr. Xing pled guilty to Assault and Battery. The relevant Judgment and Commitment Order was entered on June 25, 2003 and Mr. Xing's surety bond was discharged at that time.

However, on January 12, 2003, while the instant case was still pending, Mr. Xing was cited for a number of traffic violations, including speeding, driving under the influence, and reckless driving. Commission of these acts was a violation of Mr. Xing's bail conditions in the instant case.¹ The Government could therefore, have brought a motion at any time after January 12, 2003, to revoke bail and require Mr. Xing to forfeit his bond. Unfortunately, the Government failed to bring the required motion until

¹ These traffic violations were also eventually settled by way of a plea agreement, with Mr. Xing pleading guilty to reckless driving on August 5, 2003.

1 June 16, 2003. As noted above, the motion was not heard until August 6, 2003, long after the Judgment
2 and Commitment Order was entered in the instant case.

3 This delay in seeking forfeiture is fatal to the Government's motion. Upon judgment and conviction,
4 Mr. Xing's bail was discharged. Hence, the res of the forfeiture action, the surety bond, no longer exists.
5 The Government could have prevented this, simply by incorporating the right to seek forfeiture into the
6 terms of the plea agreement, but it neglected to do so. To allow the Government now to seek forfeiture
7 is both procedurally improper and violates the spirit, if not the letter, of the rule against double jeopardy.
8 The Government's motion for a declaration of forfeiture must be and is DENIED.

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10 SO ORDERED this 12th day of August, 2003.

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/s/
JUAN T. LIZAMA, Associate Judge

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