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5	For Publication
6	IN THE SUPERIOR COURT
7	FOR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
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9	COMMONWEALTH OF THE NORTHERN) Criminal Case No. 02-0282 MARIANA ISLANDS,
10	Plaintiff,
11	ORDER DISMISSING THE v. INFORMATION
12	JOHN F. NGESKEBEI,
13	)
14	Defendant. )
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16	THIS MATTER was most recently before the Court for a status conference on September. 24
17	2003. Present were Grant Sanders on behalf of the Commonwealth and Douglas Hartig on behalf of Mr
18	Ngeskebei. The conference was held to evaluate Mr. Ngeskebei's fitness to stand trial. After carefully
19	considering the expert evaluations of Mr. Ngeskebei's psychiatric condition, the Court is prepared to rule
20	However, the Court will begin with a brief recitation of the facts of the case.
21	FACTUAL BACKGROUND
22	1. Mr. Ngeskebei is charged with Murder in the Second Degree, to wit, fatally stabbing his stepfather
23	Mr. Loredo Ang Roquelara. From the beginning of proceedings in this matter, the Court and the
24	parties have been concerned with Mr. Ngeskebei's mental state. Therefore, the Court has nov
25	ordered four separate competency evaluations. The first of these examinations was conducted in
26	October 2002. The examining psychiatrist, Willi Gutowski, M.D., concluded that Mr. Ngeskebe
27	was not then competent to stand trial, but would probably benefit from further psychiatric care
28	including provision of appropriate medication.

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The second examination was conducted on Feb. 24, 2003. After this examination, Dr. Gutowski concluded that Mr. Ngeskebei, while still clearly troubled, was capable of understanding the proceedings and of assisting his attorney in his defense. This report notwithstanding, the Court remained unconvinced that Mr. Ngeskebei was truly competent to stand trial. Therefore, the Court ordered a third evaluation.

3. The third evaluation was conducted on May 5, 2003 by Dr. Gutowski and Dr. Anthony Bottone, with Dr. Gutowski writing the report. The doctors concluded that Mr. Ngeskebei's mental functions had declined significantly since he was last examined and that he was no longer competent to stand trial. However, Dr. Gutowski noted that Mr. Ngeskebei's decline might be due to failure to provide him with adequate medication for his condition. (The Division of Corrections had apparently not been providing the medication prescribed). Therefore, the Court ordered a fourth evaluation, with the provision that Mr. Ngeskebei be provided with all necessary medical treatment.

At the Sept. 24th hearing, Dr. Gutowski presented his report on this fourth evaluation. He concluded that Mr. Ngeskebei was not currently competent to stand trial and likely would not become competent within 90 days even with provision of appropriate medication and treatment.

## CONCLUSIONS OF LAW

Before a criminal defendant can be brought to trial, he must be competent. In the Commonwealth, a defendant is competent to stand trial if he "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and . . . has a rational as well as a factual understanding of the proceedings against him." 6 CMC § 6603(a). A person who is not competent cannot be made to stand trial. 6 CMC § 6603(b). Where a court has entered an initial finding that there is reasonable cause to believe that a defendant is not competent, it may then order the defendant committed to a psychiatric facility for evaluation. 6 CMC § 6604(e). After considering the results of this evaluation and other evidence that might be presented, the court must decide whether the defendant has been proved incompetent by a preponderance of the evidence. If so, the court must then consider whether there is a substantial likelihood that the defendant could be made competent within 90 days. 6 CMC § 6607. If so, the Court must order the defendant to receive another, more extensive period of psychiatric treatment and evaluation. 6 CMC

§ 6607(d). If not, the court must immediately discharge the defendant. 6 CMC § 6607(g).

In this instant case, the most recent report provided to the Court by Dr. Gutowski indicates that Mr. Ngeskebei is still not competent to stand trial. Furthermore, when called to the stand to give testimony during the hearing, Dr. Gutowski stated that it was his opinion that Mr. Ngeskebei was unlikely to become competent to stand trial within 90 days, even with proper medication. Therefore, the Court has no choice but to discharge Mr. Ngeskebei immediately. The pending information must be and is DISMISSED.

The Court recognizes that Mr. Ngeskebei might still be a danger to the community. Furthermore, the Court recognizes that Mr. Ngeskebei could benefit from psychiatric treatment. However, the Court lacks the power to order Mr. Ngeskebei into treatment *sua sponte* and the government has not filed a petition asking for civil commitment. (Based on the testimony presented at the Sept. 24th hearing, the Government should have known that Mr. Ngeskebei's release was imminent). Therefore, the Court hopes that the Government, Mr. Ngeskebei's family, or some other responsible party will avail themselves of the CNMI's Involuntary Civil Commitment statute, 3 CMC §§ 2501, *et seq*. This would both protect the public and insure that Mr. Ngeskebei gets necessary medical treatment. However, absent a petition to commit Mr. Ngeskebei and in accordance with 6 CMC § 6607(g), defendant must be and shall be released from custody immediately and without condition.

SO ORDERED this 2nd day of October, 2003.

/s/ JUAN T. LIZAMA, Associate Judge