

1 **FOR PUBLICATION**

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3 **IN THE SUPERIOR COURT**

4 **OF THE**

5 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

6
7 **COMMONWEALTH OF THE NORTHERN)**
8 **MARIANA ISLANDS,)**

9 **Plaintiff,)**

10 **v.)**

11 **DERWIN Y. ERWIN,)**

12 **Defendant.)**
13 _____)

CRIMINAL CASE NO. 03-0203E

**ORDER GRANTING MOTION
TO DISMISS FOR FAILURE TO
PROSECUTE**

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15 This matter came on for hearing on March 31, 2005, pursuant to Defendant’s Motion to
16 Dismiss for failure to prosecute. Angela Krueger of the Public Defender’s Office appeared for the
17 Defendant. The Government did not file any opposition to the matter, and Assistant Attorney
18 General Joseph Taijeron, who was present in Court for another matter, notified the Court that the
19 matter had not been assigned to anyone in the Attorney General’s Office. As such, the Government
20 requested a continuance to allow assignment of the case. The matter was continued until April 7,
21 2005. As of the April 7, 2005, hearing, the Government did not present any argument opposing the
22 matter, orally or in writing.
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24 The basis of Defendant’s Motion is that although the Government filed an Information
25 against Defendant on June 27, 2003, service on Defendant was not perfected until February 2005.
26 The Government made some effort to serve Defendant in 2003, but failed to attempt service in 2004,
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1 although Defendant was in court on several occasions for traffic violations. When Defendant was
2 finally served, in 2005, it was a result of Defendant requesting a police clearance from the clerk of
3 court rather than through any efforts by the Government.
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5 Defendant seeks a dismissal pursuant to Commonwealth Rule of Criminal Procedure 48(b),
6 which grants the Court the power to dismiss an Information if there is unnecessary delay in bringing
7 a defendant to trial. Defendant also cites the Sixth Amendment right to a speedy trial as one of his
8 grounds for dismissal of the Information. However, the prosecutorial delay need not rise to the level
9 of a Sixth Amendment violation for the Court to invoke its “inherent power,” as provided by Rule
10 48(b), to dismiss a case that has not been timely prosecuted. *See United States v. Hatstrup*, 763 F.2d
11 48(b), to dismiss a case that has not been timely prosecuted. *See United States v. Hatstrup*, 763 F.2d
12 376 (9th Cir. 1985). *United States v. Sears, Roebuck, & Co., Inc.*, 877 F.2d 734 (9th Cir. 1989).

13 In the current matter, the Government has provided no reason justifying the period of time
14 that has elapsed between the filing of the Information in 2003 and the Defendant being notified of
15 the charges against him at the clerk’s office in 2005. Such delay could have been avoided if the
16 Government made diligent efforts to serve the Defendant. Although the Defendant did not assert any
17 prejudice from the delay, when there is a substantial delay between the time charges are filed and
18 a Defendant’s notification of such, prejudice to the Defendant can be presumed. The Court Rules
19 do not prescribe a time period during which service must be accomplished, nor is there any
20 precedent which establishes a fixed period of weeks or months. Each case must be evaluated in the
21 light of controlling circumstances, bearing in mind that action or inaction by a party or his counsel
22 must not be permitted when such action or inaction effectively defeats the timely prosecution of
23 cases, or when it is likely to prejudice a party. Delay alone can infuse an adverse element into the
24 proper flow of litigation: evidence deteriorates or disappears, memories fade, and witnesses die or
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1 move away. If the delay is unjustified, the court can and must act to redress the balance.

2 “Delay in serving a complaint is a particularly serious failure to prosecute because it affects
3 all the defendant’s preparations.” *Pearson v. Dennison*, 353 F.2d 24, 28 (9th Cir. 1968)); *see also*
4 *Howmet Corp. v. Tokyo Shipping Co., Ltd.*, 318 F. Supp. 658 (D.C. Del. 1970).¹

6 Certainly, if the delay had been caused by the Defendant, any hardship would have been of
7 his own making. However, when the delay is the fault of the Government, there is nothing the
8 Defendant could have done differently as “[a] defendant has no duty to bring himself to trial; the
9 State has that duty.” *Barker v. Wingo*, 407 U.S. 514, 527, 92 S. Ct. 2182, 2190, 33 L. Ed. 2d 101,
10 115 (1972).

12 In view of the foregoing, and in particular, the absence of any Government opposition to
13 Defendant’s motion to dismiss, Defendant’s Motion is hereby GRANTED and the case is dismissed.

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15 So ORDERED this 21st day of April 2005.

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18 /s/
DAVID A. WISEMAN, Associate Judge

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¹ Although this is a civil case the same principle applies to a criminal proceeding.