

1 FOR PUBLICATION

2 **IN THE SUPERIOR COURT**
3 **OF THE**
4 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

5 **COMMONWEALTH OF THE NORTHERN**)
6 **MARIANA ISLANDS,**)

7 **Plaintiff,**)

8 **v.**)

9 **JIEMENS S. REBEDULLA,**)

10 **Defendant.**)
11

CRIMINAL CASE NO. 01-0016

ORDER DENYING DEFENDANT'S
APPLICATION FOR ORDER
VACATING CONVICTION

12 **I. INTRODUCTION**

13 **DEFENDANT** Jiemens S. Rebedulla¹ was charged with Assault and Battery and Disturbing
14 the Peace in an Information filed with the court on January 8, 2001. Defendant was subsequently
15 adjudged guilty of both offenses after a bench trial, and was sentenced to three days in jail, all
16 suspended, except for the first twenty-four hours credit for time served. [Defendant's Motion to
17 Amend Suspended Sentence, December 21, 2001]. Further, as part of Defendant's sentence,²
18 Defendant was placed on one year of *supervised* probation under the direction and supervision of
19 the Office of Adult Probation ("OAP"). [Amended Order, January 3, 2002, Condition a]. Defendant
20 now seeks to have his conviction vacated pursuant to 6 CMC § 4113.

21 **II. BACKGROUND**

22 Defendant seeks an order from this Court vacating his conviction pursuant to 6 CMC §
23 4113. This statute provides that: "[i]f the court has not revoked the order of probation and
24 pronounced sentence, the defendant shall, at the end of the term of probation, be discharged by the
25 court." 6 CMC § 4113(d). Further, if the court has not revoked the order of probation and

26 ¹ In Defendant's current application, the caption lists the Defendant's last name as "Rebulla," not "Rebedulla."
27 However, all of the other court documentation lists the Defendant as Rebedulla.

28 ² Defendant was further ordered to: write a letter of apology to the victim; pay a court assessment fee; pay a
probation service fee; and to obey all criminal laws of the Commonwealth. [Amended Order, p2, conditions b-e.] In the
original Order, Defendant was also ordered to report to the Probation Office no later than December 5, 2001, attend anger
management counseling, and to return to the court on October 9, 2002, at 9:00 a.m. [Order, December 5, 2001].

1 pronounced sentence, “the court shall vacate the judgment of conviction and the defendant may not
2 be deemed to have been convicted of the crime for any purpose.” 6 CMC § 4113(e). Defendant
3 asserts that this is a mandatory duty of the court. [Defendant’s Application for Order Vacating
4 Conviction, p2, ln 8-9].

5 However, Defendant’s brief fails to mention that the Defendant did not comply with the
6 terms of his probation. He did not report to the Probation Office on December 5, 2001, as ordered.
7 Defendant also failed to write a letter of apology to his victim, failed to pay either the court
8 assessment fee or the probation fee, and failed to attend anger management counseling. [Affidavit
9 of Probation - Suspended Sentence Violation, October 8, 2002]. On October 9, 2002, the Defendant
10 was represented at the review hearing by the Public Defender’s Office, but did not attend himself.
11 The matter was taken off calendar because the Defendant had been deported on December 20, 2001.³
12 [Order, October 9, 2002].

13 III. ANALYSIS

14 The Court realizes that if a defendant has been deported, it may be difficult for him to
15 complete certain terms of his probation. However, this Defendant never visited the OAP, as ordered,
16 to initiate the probationary process while Defendant was still residing in the Commonwealth.
17 Furthermore, as mentioned *supra*, the record indicates that this Defendant made no effort to comply
18 with *any* of the terms of his probation, even those that could have been completed after deportation.

19 The record also shows that the only reason Defendant was not subject to having his probation
20 revoked was that he was no longer present in the Commonwealth. Thus, revocation would have had
21 little practical effect at that time. The Court does not believe that at the review hearing, counsel
22 from the Public Defender’s Office agreed to take this matter off calendar as part of a clever ploy so
23 that the Defendant could later make a 6 CMC § 4113 claim. This is simply a case of economy for
24 all parties involved: the Public Defender’s Office, the OAP, the court, etc. Why should any of these
25 parties go through the process of revoking probation on a party that no longer resides in the
26 Commonwealth?

27 _____
28 ³ As ordered, the date of the Defendant’s deportation was provided by the Office of Adult Probation, and is
apparently uncontested at this juncture.

1 Nothing in this record indicates that Defendant made any attempt whatsoever to preserve a
2 6 CMC § 4113 claim by attempting to meet any of his obligations under the terms of his sentence.
3 If that were the case, the Court would be inclined to consider granting Defendant's application to
4 have his conviction vacated. However, the Court does not believe that 6 CMC § 4113 was intended
5 as a device for convicted criminals to benefit in circumstances such as those present here.
6 Defendant's wilful disregard of the Court's order and the terms of his probation should not
7 ultimately result in having his criminal record cleared.

8 IV. CONCLUSION

9 The Court is aware that a number of 6 CMC § 4113 claims been made by the Public
10 Defender's Office recently. Most of these cases feature Defendants who have legitimately complied
11 with the terms of their probation, and fall squarely under the purview of 6 CMC § 4113. In a few
12 cases, 6 CMC § 4113 is available to a defendant who has not fully complied with the terms of his
13 or her probation, but the Attorney General's Criminal Division, together with the OAP, failed to take
14 appropriate steps to revoke probation.⁴

15 This is not such a case. The Court cannot in good conscience grant a Defendant's application
16 for an order vacating his conviction when Defendant made no effort to comply with any of the terms
17 of his probation, failed to report to the OAP as ordered, and the only reason probation was not
18 revoked was because Defendant had already been deported. Therefore, Defendant's Application for
19 Order Vacating Conviction is **DENIED**.⁵

20 **SO ORDERED this 13th day of May 2005.**

21
22 /s/
23 ROBERT C. NARAJA,
24 Presiding Judge

25 ⁴ Cf this court's decision in *Torwan*, Criminal Case No. 00-0412, where a defendant's Application for Order
26 Vacating Judgment was Granted, where the defendant had not complied with all of the terms of his probation, but where
OAP had the opportunity to revoke probation, and did not.

27 ⁵ The Court would happily review this particular Defendant's application again if Defendant would make a
28 reasonable, good faith effort to meet the terms of his probation still applicable. Alternatively, the Court would welcome
an appeal to the Commonwealth Supreme Court, or clarification of 6 CMC § 4113 by the Legislature, for guidance in
circumstances such as these.