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**ADVISEMENT AND WAIVER OF RIGHTS**

The Defendant was then advised of his constitutional rights and the consequences of a plea of Guilty. The Defendant was further advised of the maximum possible penalty of the offenses and any minimum penalty required by the statute. The Defendant waived his rights and entered a plea of **“Guilty”** in **Criminal Case No. 04-0331(C)** to the offense of **Assault and Battery** as charged in **Count II** of the Information, in violation of **6 CMC § 1202 (a)**. In **Criminal Cases Nos. 03-0322(E), 03-0376(B)** and **03-0390(D)** the Defendant admits that he violated the terms and conditions of his probationary sentence.

**ACCEPTANCE OF PLEA OF GUILTY**

The Court accepted Defendant’s plea of Guilty to the offense after finding that: (1) the Defendant’s decision to plead Guilty is freely, voluntarily, and intelligently made; (2) he has had the advice of competent counsel whom he said he was satisfied with; (3) he understood the consequences of his plea of Guilty; and, (4) there is a factual basis for the plea of Guilty. Accordingly:

**ADJUDICATION OF GUILT**

**IT IS HEREBY ADJUDGED AND DECREED** that Defendant, **Daniel Delos Santos**, is **Guilty** in **Criminal Case No. 04-0331(C)** of the offense of **Assault and Battery** as charged in **Count II** of the Information, in violation of **6 CMC § 1202 (a)**. In **Criminal Cases Nos. 03-0322(E), 03-0376(B)** and **03-0390(D)** the Defendant admits that he violated the terms and conditions of his probationary sentence, and is hereby adjudged to be in violation of his probation in said three cases.

**SENTENCE**

After considering the facts of this case and the recommendations of counsel, the Court hereby sentences the Defendant as follows:

With respect to Defendant’s violation of probation in Criminal Cases Nos. 03-0322(E), 03-0376(B) and 03-0390(D), the Court hereby revokes said probation. The parties have agreed that the Court shall determine what balance of the suspended sentences shall be served.

1           In determining the appropriate sentence for Defendant to serve under his suspended  
2 sentences, the Court has reviewed the three cases for which Defendant was previously sentenced.  
3 In Criminal Case No. 03-0322(E), Defendant was charged with three counts of Assault and  
4 Battery. In Criminal Case No. 03-0376(B), Defendant was charged with Receiving Stolen  
5 Property, Criminal Mischief and Tampering with a Vehicle. In Criminal Case No. 03-0390(D),  
6 Defendant was charged with Burglary, two counts of Theft. In the instant case, although he pled  
7 guilty to Assault and Battery, Defendant was charged with Aggravated Assault and Battery,  
8 Disturbing the Peace, and Riot. The 2005 case against Defendant has been dismissed.

9           Despite Defendant's continuous activity in committing numerous crimes and being  
10 convicted of several, he has only served a total of seventy-five (75) days of the five (5) year  
11 suspended sentences running concurrently.

12           In placing a criminal on probation, an act of clemency and grace, the state takes a risk that  
13 the probationer may commit additional antisocial acts. *California v. Hainline*, 28 P.2d 16 (Cal.  
14 1934). Where probation fails as a rehabilitative device, as evidenced by the probationer's failure  
15 to abide by the probation conditions, the state has a great interest in being able to imprison the  
16 probationer.

17           We cannot afford to have poor-risk, convicted criminals being free in society and a  
18 potential danger to the community. Revocation deprives an individual, not of the absolute liberty  
19 to which every citizen is entitled, but only of the conditional liberty properly dependent on  
20 observance of special restrictions.

21           Defendant here did not comply with his conditions of probation and this Court has  
22 revoked his probation.

23           Pursuant to 6 CMC § 4113(c), "[u]pon the revocation of probation, the court may then  
24 impose any sentence which may have initially been imposed had the court not suspended  
25 imposition of sentence in the first instance."

26           In this case, the Court finds that the interest of justice will best be served by incapacitating  
27 and isolating Defendant from society for the maximum allowable period of time, which in this  
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1 case will be to serve the remainder of his sentences, as though they had not been suspended. In  
2 calculating Defendant's remaining term to serve, the Court notes that the five years suspended  
3 sentence commenced on March 26, 2004 and was to end on March 26, 2009. Defendant has  
4 served a total of 298 days in prison made up of 75 days served on of his suspended sentence and  
5 223 days of incarceration since December 29, 2004, when he was arrested in Criminal Case No.  
6 05-0004. Deducting the credit of 298 days for time served, Defendant's release date shall be on  
7 June 1, 2008.

- 8 1. For **Criminal Case No. 04-0331(C), Count II (Assault & Battery)**, the  
9 Defendant is sentenced to one (1) year imprisonment. Said sentence shall run  
10 concurrently with the sentence in Criminal Cases Nos. 03-0376(B), 03-0390(D)  
11 and 03-0322(E), with credit for time served, under the following conditions:
- 12 a. Defendant will pay an assessment fee of \$25.00 as required by PL 11-105,  
13 within ninety (90) days of his release from incarceration;
  - 14 b. Defendant must obey all CNMI and Federal laws. Minor traffic citations  
15 shall not constitute a violation of this condition.

16  
17 **DATED:** August 9, 2005

18  
19 /s/  
20 DAVID A. WISEMAN, Associate Judge

21 **NOTE:** ANY INCONSISTENCY BETWEEN THIS WRITTEN ORDER AND THE ORAL PRONOUNCEMENT OF SENTENCE IN OPEN  
22 COURT WILL BE RESOLVED IN FAVOR OF THIS WRITTEN ORDER. THEREFORE, COUNSEL MUST MOVE THE COURT FOR A  
23 CORRECTION OF ANY DISCREPANCY OR IT SHALL BE DEEMED WAIVED.