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FOR PUBLICATION

**IN THE SUPERIOR COURT OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

COMMONWEALTH OF THE NORTHERN)
MARIANA ISLANDS,)
)
Plaintiff,)
)
vs.)
)
SUKA RODRIGUES,)
)
Defendant.)
_____)

CRIMINAL CASE NO. 04-0349

**ORDER GRANTING
DEFENDANT'S MOTION TO
DISCHARGE DEFENDANT
FROM PROBATION**

THIS MATTER came before the Court for hearing on September 14, 2006 at 9:00 a.m. in Courtroom 223A, pursuant to Defendant's Motion to Discharge Defendant from Probation. The Plaintiff was represented by Assistant Attorney General Jeffery Warfield. The Defendant appeared with Counsel, Elisa Long, Chief Public Defender.

Defendant's motion is based on the fact that defendant's probation expired on October 15, 2005 and that pursuant to 6 CMC § 4113(d) the jurisdiction of the Court ceased after said date, notwithstanding the fact that a bench warrant for the arrest of Defendant was issued prior to the said expiration of probation. By contrast, the Commonwealth asserts that the Court's issuance of a bench warrant for Defendant's failure to appear at a review hearing tolled the expiration of Defendant's probation, and thereby extended the Court's jurisdiction over Defendant's probation.

BACKGROUND

In this case, on February 7, 2005, Mr. Rodrigues entered a plea of guilty to Assault and Battery, in violation of 6 CMC § 1201(a). He was sentenced to one year of imprisonment, all suspended except 60 days. The Court placed Mr. Rodrigues on probation, with certain conditions, for one year. The Court also set a review hearing in this matter for May 7, 2005.

1 Mr. Rodrigues did not appear at the review hearing on May 19, 2003 and a Bench Warrant
2 issued. At no point did the government move to revoke Mr. Romolor's probation, which expired
3 on February 7, 2006.

4 On or about August 4, 2006, Mr. Rodrigues was arrested on the warrant. On August 10,
5 2006, Mr. Rodrigues appeared without counsel before this Court and the matter was continued. The
6 Court appointed the Office of the Public Defender for Mr. Romolor and set a review hearing for
7 August 17, 2006.

8 **DISCUSSION**

9 At the August 17, 2006 hearing counsel from the Office of the Public Defender argued that
10 because Mr. Rodrigues probation had already expired, the Court lacked jurisdiction over the matter.
11 Counsel for Mr. Rodrigues further argued that the bench warrant did not serve to extend the
12 jurisdiction of the Court since it had already served its purpose of securing Mr. Rodrigues's
13 appearance in Court, and because no CNMI law or precedent mandates such tolling.

14 The Court allowed counsel to brief the matter and heard arguments on September 14, 2006.

15 The Court, based on the arguments of counsel and a review of their written submissions and
16 the Court file issues its ruling below.

17 This Court must agree with defendant's position in the issue presented to the Court and find
18 that the Court does not have jurisdiction over a defendant once his probation expires. Although a
19 bench warrant issued during the probation period is proper to bring the defendant into Court, once
20 there, the Court cannot exercise jurisdiction beyond the hearing on the bench warrant if defendant's
21 probation had already expired, unless the defendant voluntarily agrees to extend the probation. The
22 Commonwealth argues that the probation is tolled and cites federal case law as well as a few state
23 law cases.

24 Although the Commonwealth is correct in asserting that federal courts consider the
25 probation tolled or extended beyond the expiration term of probation upon the issuance of a bench
26 warrant prior to the expiration of the term, they have a statute that so authorizes such procedure.

27
28 The power of the court to revoke a sentence of probation for a violation of a

1 condition of probation, and to impose another sentence, extends beyond the
2 expiration of the term of probation for any period reasonably necessary for the
3 adjudication of matters arising before its expiration if, prior to its expiration, a
4 warrant or summons has been issued on the basis of an allegation of such a
5 violation.

6 18 U.S.C. § 3565(c).

7 By comparison, the CNMI does not have a statute explicitly authorizing such tolling. Indeed, §
8 4113(d) unequivocally mandates that a probationer be discharged from probation, if the order of
9 probation has not been revoked and makes no mention of any tolling of the probationary period
10 without a prior revocation. 6 CMC § 4113(d). Further, the Commonwealth's reference to the use
11 of tolling by other state jurisdictions to toll the expiration of probation under certain circumstances
12 absent statutory instruction, is unpersuasive. Although it may serve sound policy to toll the
13 expiration of a probationer's term of probation in instances where such probationer has failed to
14 comply with the terms of his or her probation, this Court firmly believes that it is up to the
15 legislative branch to enact such policy into law.¹

16 Defendant's reference to 6 CMC § 4113(d) as the controlling statutory provision with
17 respect to the expiration of probation is correct and was the governing law at the time. The
18 Government failed to request that the Court revoke Defendant's probation prior to its expiration
19 on January 29, 2004. Therefore, when he appeared in 2006, pursuant to a bench warrant the Court
20 had jurisdiction over defendant for the hearing, however, not for any thing further with respect to
21 the terms and conditions of probation.

22 CONCLUSION

23 Consistent with the foregoing opinion, Defendant's request to be discharged from probation
24 is **GRANTED**.

25 ¹Counsel should be aware that the legislature has since taken steps to enact such policy.
26 Specifically, 6 CMC § 4113(d) has been amended by Public Law No. 15-46, which provides the
27 Commonwealth with more flexibility in enforcing the terms and conditions of probation,
28 including a tolling provision applicable under certain circumstances.

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SO ORDERED this October 16, 2007.

/S/
DAVID A. WISEMAN, Associate Judge