

1 FOR PUBLICATION

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3
4 **IN THE SUPERIOR COURT**
5 **FOR THE**
6 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

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

9 Plaintiff,

10 vs.

11 **VICENTE LIMES LANIYO,**
12 **(d.o.b. 04.24.67)**
13 Defendant.

) **CRIMINAL CASE NO. 07-0162C**

) DPS Case No. 07-08665

)
) **ORDER DENYING DEFENDANT’S**
) **MOTION FOR REDUCTION OF**
) **SENTENCE FOR**
) **LACK OF JURISDICTION**

14 THIS MATTER came before the Court on February 3, 2010 at 3:00 p.m. for a hearing on
15 defendant’s motion for reconsideration of the sentence originally imposed on him. Plaintiff
16 Commonwealth of the Northern Mariana Islands was represented by Assistant Attorney General
17 William Downer. Defendant Vicente L. Laniyo appeared in custody with his counsel, Assistant
18 Public Defender Richard C. Miller.

19 **A. Procedural Background**

20 On June 18, 2008, the Defendant entered a guilty plea pursuant to a plea agreement, and
21 this Court found him guilty of **Aggravated Assault and Battery, a crime involving domestic**
22 **violence in this case**, as charged in **Count IV** of the First Amended Information filed on
23 September 6, 2007, in violation of 6 CMC § 1203(a).

24 On January 14, 2009, the matter came before the court for a sentencing hearing. At the
hearing, the Commonwealth was represented by Chief Prosecutor Kevin Lynch. Defendant

1 appeared in custody with counsel, Assistant Public Defendant Richard C. Miller. At the
2 conclusion of the hearing, the Court orally pronounced and sentenced Defendant to serve ten
3 years of imprisonment without the possibility of parole, with credit for time served. The Court
4 thereafter issued a written sentence and commitment order which was filed on January 20, 2009.

5 On May 18, 2009, one hundred and twenty-four days after the January 14th hearing,
6 Defendant filed a motion for reconsideration under 6 CMC § 4114 and Com.R.Cr.P. 35(b). In
7 particular, the reduction in sentence that Defendant urges the Court to allow is the possibility of
8 parole. Mot. at 2, ¶ 6. Defendant did not notice the motion for a hearing, but instead requested
9 that the Court either enter such an order without a hearing, or grant a hearing on the motion to
10 reconsider. Defendant's motion did not come to the personal attention of the undersigned until
11 several months later. The matter was subsequently noticed for a hearing on November 12, 2009,
12 which was then continued to December 9, 2009. At the December 9th hearing, the Court sua
13 sponte raised the issue of jurisdiction based on the 120 days limitation provided under 6 CMC §
14 4114 and Com.R.Cr.P. Rule 35(b). The Court then set a briefing schedule, and a hearing on the
15 issue of jurisdiction and defendant's motion for reconsideration. The Commonwealth
16 subsequently filed a brief captioned "Aid to the Court" on December 15, 2009, and Defendant
17 filed his bench brief on time for filing motion for reconsideration of sentence. The hearing was
18 finally heard on February 3, 2010.

19 B. Issue

20 Whether the 120 days period from which a motion to reduce sentence under Com.R.Cr.P.
21 35(b) may be made begins from the time of oral pronouncement or when a written
22 judgment is issued by the court?

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24 /

1 C. Analysis

2 Rule 35(b) of Commonwealth Rules of Criminal Procedure states that “[a] motion to
3 reduce a sentence may be made ... within 120 days after the sentence is imposed....” Section
4 4114 of Title 6 of the Commonwealth Code also provides that “[t]he court may reduce a sentence
5 within 120 days after the sentence is imposed....” The Commonwealth Supreme Court noted in
6 a case involving the issue of a denial of a motion to reduce sentence that

7 Title 6, section 4114 of the Commonwealth Code is identical to Commonwealth
8 Rule of Criminal Procedure 35(b), and Fed.R. of Crim.P. 35(b) prior to its
9 modification in 1987. We rely upon cases interpreting Fed.R.Crim.P. 35(b) prior
10 to the 1987 amendments.

11 *Commonwealth v. Ramangmau*, 1996 MP 17, 5 N.M.I. 19, fn.2. Both the prosecution and the
12 defense recognize that the majority of the federal cases interpreting Rule 35(b) has held that the
13 imposition of sentence becomes effective at the time of oral pronouncement, not at the entry of
14 judgment. Def’s Bench Brief at 2; Pl’s Aid at 2. Nevertheless, because there is no
15 Commonwealth caselaw adopting this holding, Defendant suggests that this Court adopt the
16 minority view that the imposition of sentence becomes effective at the entry of judgment. Bench
17 Brief at 2. This Court declines to follow the minority view. As the U.S. Court of Appeals for the
18 Ninth Circuit long held, “The only sentence that is legally cognizable is the actual oral
19 pronouncement in the presence of the defendant.” *United States v. Munoz-Dela Rosa*, 495 F.2d
20 253, 256 (9th Cir. 1974) (citations omitted). In *United States v. Aguirre*, the Ninth Circuit stated
21 a sound policy and rationale for this conclusion. It stated, “[w]e find that sentence is imposed at
22 the time it is orally pronounced. This interpretation is consistent with the requirement under *the*
23 *Sixth Amendment* and *Rule 43(a) of the Federal Rules of Criminal Procedure* that the defendant
24 shall be physically present at the imposition of sentence.” *United States v. Aguirre*, 214 F.3d.
1122, 1125 (9th Cir. 2000). Rule 43(a) of the Commonwealth Rules of Criminal Procedure also

1 mandates the presence of the defendant at the imposition of sentence. Based on a review of the
2 foregoing authority, this Court concludes that Rule 35(a)'s provision that allows a motion to
3 reduce a sentence to be made within 120 days after the sentence is imposed must be made within
4 120 days after the oral pronouncement. In this case, defendant's motion was untimely.
5 Therefore, this Court lacks jurisdiction to hear the substantive motion. *United States v. Duarte-*
6 *Penaloza*, 202 F.Supp.2d 1370, 1372 (N.D. Ga. 2002) ("court is powerless to adjudicate the
7 merits of an untimely Rule 35(b) motion.").

8 Defendant argues that in the event this Court concludes the time of oral pronouncement
9 begins the 120 day period in Com.R.Cr.P. 35(b), this Court should exercise its discretion to enter
10 *nunc pro tunc* relief. In support of this argument, Defendant cites to federal caselaw that
11 recognizes Rule 35's time limitations as jurisdictional, but "must be applied in a manner that is
12 consistent with the Due Process Clause...." *United States v. Duarte-Penaloza, supra*. However,
13 those cases are distinguishable because they involve situations when the government
14 inadvertently fails to timely file a Rule 35 motion, not when a defendant fails to do so.

15 D. Conclusion

16 This Court imposed a lawful sentence pursuant to the parties' plea agreement and its
17 authority under Commonwealth law. The Court's jurisdiction to address any further issues about
18 its sentence is governed by 6 CMC § 4114 and Com.R.Cr.P. 35(b). Defendant's failure to timely
19 move for a reduction or reconsideration of the lawful sentence bars this Court from exercising
20 any further authority over its sentence. For these reasons, the motion is hereby DENIED.

21 IT IS SO ORDERED this 4th day of February, 2010.

22
23 /s/ _____
RAMONA V. MANGLONA, Associate Judge