

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOR PUBLICATION

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

COMMONWEALTH OF THE NORTHERN)
MARIANA ISLANDS,)
)
Plaintiff,)
)
v.)
)
VICENTE T. ALDAN,)
D.O.B. 04/04/1957)
)
Defendant.)
_____)

CRIMINAL CASE NO. 09-0103T
D.P.S. CASE NO. 09-000272T

ORDER AFTER HEARING

I.

INTRODUCTION

This matter came before the Court on March 31, 2010 at 9:00 a.m. in Courtroom 223A for the Commonwealth’s Motion to set aside the Plea Agreement entered into between the Commonwealth and Defendant Vicente T. Aldan (“Defendant”) and further to reinstate criminal charges against him. The Government was represented by Assistant Attorney General Brian Gallagher and Assistant Attorney General George Hasselback. The Defendant appeared with counsel, Joaquin DLG. Torres, Esq.

II.

FACTUAL BACKGROUND

This matter initially came before the Court on November 3, 2009 for a Change of Plea, where Defendant pled guilty to Assault “crime of domestic violence” as charged in Count I of the

1 Information, in violation of 1 CMC § 1461(a)(1). During the hearing, both parties entered into a
2 Plea Agreement dismissing two counts of the Information, Illegal Possession of a Firearm and
3 Assault with a Dangerous Weapon. The Commonwealth further stated that by pleading guilty to
4 the “Assault” charge Defendant would permanently be barred from ever owning or possessing
5 any other firearm.
6

7 In addition, as part of the Plea Agreement, both parties agreed that Defendant would be
8 escorted to Tinian by DPS, where the alleged gun would be turned over to Tinian police officers.
9 Indeed, according to the parties the handgun used in the incident would be taken off the street.
10 Based on these arguments, which were emphatically expressed to the Court by both parties, as
11 Officers of the Court, that the gun was to be retrieved and surrendered by Defendant, the Court
12 modified Defendant’s bail conditions so that Defendant could go to Tinian and surrender the
13 weapon. However, when authorities escorted Defendant to Tinian to retrieve the gun, the gun
14 was never recovered. Based on the representations made by the parties, the Defendant at that
15 time, was still in possession of an illegal firearm.
16

17
18 On February 2, 2010, the Commonwealth filed a Motion to set aside the Plea Agreement
19 and to reinstitute criminal charges against Defendant. The Commonwealth argued that the
20 “central consideration of the favorable plea was for Defendant to surrender the firearm that was
21 alleged to have been used in the commission of the crimes charged in the Information...[which]
22 the Defendant has failed to [do].” Thus, despite having received a favorable plea agreement,
23 Defendant has still failed to fulfill the most important condition imposed upon him by the Plea
24 Agreement, which was to turn over the gun.
25

26 However, on March 23, 2010, Mr. Hasselback appeared on behalf of the Commonwealth
27 and informed the Court that he had been “instructed to withdraw the Motion to set aside the Plea
28

1 Agreement.” When the Court inquired into a basis for his withdrawal of the motion, Mr.
2 Hasselback stated that he was not privy to the decision making process. The Court did not accept
3 this as a proper withdrawal of the motion and ordered Defendant to contact his counsel, who was
4 not present at the time, and continued the hearing.
5

6 On March 31, 2010, Mr. Gallagher appeared on behalf of the Commonwealth and
7 informed the Court that he had a written statement from Attorney General Ed Buckingham. Mr.
8 Gallagher read the statement aloud which stated that the Plea Agreement contained certain errors
9 and based on those errors, Mr. Buckingham said that Mr. Hasselback should have spoken with
10 either himself or one of his supervisors before filing the Motion to set aside the Plea Agreement.
11

12 The Court found this practice to be highly unusual. Not only was the attorney responsible
13 for the motion sitting in the gallery of the Court, but the attorney designated to take the case was
14 reading a message that was given to him by the Attorney General. Therefore, the Court ordered
15 Mr. Hasselback to step forth and state his position regarding the withdrawal of the motion. Mr.
16 Hasselback stated that since the March 23, 2010 hearing, he has been taken off the case and has
17 no new information to provide to the Court.
18

19 III.

20 DISCUSSION

21
22 The Court has expressed its concern over the public interest and safety of the community
23 with respect to the gun laws that have been in place for several decades. The protection of the
24 public from harm that guns could either accidentally or intentionally cause is set out in laws to
25 protect that public interest. Those laws have been in this community for decades while under the
26 Trust Territory Government and then carried over to the CNMI, and continued to this day to
27 make the CNMI a safe handgun free jurisdiction.
28

1 In addition, the crime for which Defendant was convicted was the crime of assault
2 involving domestic violence. Pursuant to PL 14-9 § 1505(a)(1)(2) a law enforcement officer
3 investigating a crime involving domestic violence shall protect the victim and any member of the
4 family and prevent any further violence by seizing a deadly weapon in plain view of the officer,
5 and if a deadly weapon was actually possessed during, or used in the domestic violence, shall
6 seize all deadly weapons owned, used, possessed or within the control of the alleged perpetrator.
7

8 The courts through its judges are the ones who safeguard the precious and basic
9 constitutional rights we have, such as being free from any harm caused by dangerous weapons.
10 The illegal gun in question here is a potential danger and infringement on those rights and it is
11 the duty of this Court to do whatever it can under the law to protect the public's rights in this
12 regard. As such, the Court will exercise its constitutional duty in upholding such laws and
13 attempt to mitigate any danger or harm to the community that may result from Defendant's
14 possessing an illegal firearm.
15

16 Notwithstanding the foregoing, the Commonwealth in this case is attempting to
17 withdraw its motion, a motion filed by an Assistant Attorney General, for the purpose of
18 protecting the public against any potential harm that could be had by allowing an illegal handgun
19 to remain on the streets. Now, the Commonwealth is seeking a withdrawal of its motion.
20

21 It is undisputed that the AG's Office has the sole prerogative of instituting and filing
22 criminal charges in court, however once a case is filed with the court it is subject to the court's
23 jurisdiction. Here, the Commonwealth filed this case with the Court, and now the Court has the
24 jurisdiction over the motion. Although Rule 48(a) covers the dismissal of a motion, the Court
25 finds that the principles and objectives thereof are applicable in this matter as well regarding the
26
27
28

1 withdrawal of a motion, since the underlying premise of said rule is the public’s welfare as it is in
2 this case.

3 Rule 48(a) of the Commonwealth Rules of Criminal Procedure provides a mechanism for
4 the government to dismiss charges against a defendant by *leave of the court*. (Emphasis Added).
5 The “leave of court” language in the rule encompasses a court’s limited discretion to denying the
6 government’s request to dismiss charges consistent with separation of powers.
7

8 The prosecutorial function of a criminal case is historically within the province of the
9 executive branch. However, the “leave of court” language in Rule 48(a) permits a court to
10 exercise discretion as to whether a pending prosecution should be terminated. But the Rule has
11 been held to permit the court to deny a Government dismissal motion if the motion is prompted
12 by considerations clearly contrary to the public interest.” *Rinaldi v. United States*, 434 U.S. 22,
13 30, 98 S. Ct. 81, 86, 54 L. Ed.2d 207, 214 n. 15 (1977)(per curiam)(internal citations omitted).
14

15 In determining whether dismissal under Rule 48(a) is within its discretion, a court “is
16 limited to assessing whether the government’s motion is contrary to manifest public interest
17 because it is not based in the prosecutor’s good faith discharge of [their] duties.” *United States v.*
18 *Jacobo-Zavala*, 241 F.3d 1009, 1013 (8th Cir. 2001). “The Government must not be motivated
19 by considerations ‘clearly contrary to the public interest.’” *Id.* (citations omitted). In view of the
20 Government’s attempted withdrawal of the motion, the Court will utilize its powers to determine
21 whether or not a withdrawal of said motion is clearly in the public’s interest.
22

23 Here, the Court is concerned by the appearance that the AG’s office is attempting to
24 advocate the Defendant’s position by arguing that the Plea Agreement contained certain errors
25 and therefore should be set aside. While the Court will not address the merits of the
26 Commonwealth’s motion at this time, the Court simply cannot ignore defendant’s substantial
27
28

1 failure to comply with an essential term of the Plea Agreement and Judgment of Conviction
2 which was the return or surrender of the handgun, nor should the Commonwealth. It is the
3 Court's position that full compliance with respect to the Plea Agreement now incorporated into
4 the Judgment of Conviction regarding the return of the handgun should be pursued.
5

6 At this time, there is no motion to withdraw before the Court since Mr. Gallagher simply
7 read a statement given to him by the Attorney General. Therefore, the Court will not
8 accommodate the Commonwealth's request without a formal written motion setting forth the
9 reasons for its withdrawal. This is the very reason why Rule 48(a) contains "leave of court"
10 provision – to insure a system of checks and balances between the executive branch and the
11 courts for the actions of the government.
12

13
14 **IV.**

15 **CONCLUSION**

16 For these reasons, the Court believes that it is its duty to pursue this matter in view of
17 Defendant's substantial noncompliance with the Plea Agreement now incorporated into the
18 Judgement of Conviction.
19

20 IT IS HEREBY ORDERED: The Government's Motion is to be continued to April 14,
21 2010 at 9:00 a.m. in Courtroom 223A. Defendant may submit opposition on or before April 9,
22 2010 and any reply may be filed before the scheduled hearing.
23

24
25 **SO ORDERED** this 8th day of July, 2010.

26
27 /s/

28 _____
DAVID A. WISEMAN
Associate Judge