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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,)

v.)

GERALDINE MARIE SANCHEZ,)
D.O.B. 07/06/1981)

Defendant.)
_____)

CRIMINAL CASE NO. 09-0232(E)
D.P.S. CASE NO. 09-009484

ORDER DENYING STAY

I. INTRODUCTION

THIS MATTER came for hearing on October 7, 2010 at 1:30 p.m. in Courtroom 223A for Defendant’s Motion for a Stay of Execution. The Government was represented by Assistant Attorney General, Brian Gallagher. The Defendant appeared with counsel, Michael Curtis Brown, Assistant Public Defender. Pursuant to Commonwealth Rules of Appellate Procedure 8 and 9 and 6 CMC §6402(b), Defendant filed this present motion to stay the Court’s execution of sentence.

Defendant requests a stay of execution of sentence arguing that a stay is warranted because Defendant’s appeal raises substantial questions of law likely to result in a reversal of her conviction or in an order for a new trial. More specifically, Defendant contends that the Court erred when it did not apply the Common Law “coming of age” rule to the case at hand. Additionally, Defendant argues that the Court erred by denying Defendant’s objection to the “on or about” jury instruction. For the reasons discussed below, the Court **DENIES** Defendant’s Motion for Stay of Execution of Sentence.

1 **II. BACKGROUND**

2 On July 27, 2010, pursuant to a finding of guilt by a jury, the Court adjudged the Defendant
3 **Guilty** of the offense of **Sexual Abuse of a Minor in the First Degree**, in violation of **6 CMC §**
4 **1306 (a)(3)(A)** in **Count I**, and the offense of **Sexual Abuse of a Minor in the Second Degree**, in
5 violation of **6 CMC §1307 (a)(1)** as charged in **Count II**.

6 The Court sentenced Defendant to a term of twelve (12) years imprisonment for Count I, all
7 suspended except the mandatory term of eight (8) years to be served without parole, with credit for
8 six (6) days for time already served. In addition, the Court sentenced Defendant to a term of seven
9 (7) years imprisonment for Count II. The Court ordered Defendant to report to the Department of
10 Corrections on October 6, 2010 at 8:00 a.m. with a release date on September 30, 2018 at 8:00 a.m.

11
12 **III. APPLICABLE LAW**

13 Commonwealth Rule of Appellate Procedure 8 discusses relief pending an appeal.
14 Section (c) of said Rule states that “Rule 38 of the Commonwealth Rules of Criminal Procedure
15 governs a stay in a criminal case.” Com. R. App. P. 8(c). Rule 38(a)(2) of the Commonwealth
16 Rules of Criminal Procedure provides:

17 “A sentence of imprisonment shall be stayed if an appeal is taken and the
18 defendant is released pending disposition of appeal. If not stayed, the court may
19 recommend to the Attorney General that the defendant be retained under
20 conditions, and at a place, which permit the defendant to assist in the preparation
21 of his/her appeal to the court of appeals.” Com. R. Crim. P. 38(a)(2).

22 Commonwealth Rule of Appellate Procedure 9 discusses release in a criminal
23 case. Section (c) entitled Criteria for Release provides:

24 “The Court must make its decision regarding release in accordance with
25 Commonwealth Rule of Criminal Procedure 46. Defendant has the burden of
26 establishing that he or she will not flee or pose a danger to the community and
27 that the appeal is not for the purpose of delay and raises a substantial question of
28 law or fact likely to result in reversal or in an order for a new trial.” Com. R.
App. P. 9(c).

Pursuant to Commonwealth Rule of Criminal Procedure 46, the Court must examine
three factors to determine whether a defendant is eligible for release pending appeal. Com. R.
App. P. 9(c); Com. R. Crim. P. 46(c). A defendant has the burden of establishing that: (1) [s]he

1 will not flee the jurisdiction or pose a danger to the community; (2) the appeal is not taken for
2 the purpose of delay; and (3) the appeal raises a substantial question of law or fact likely to result
3 in reversal or in an order for a new trial.¹ *Commonwealth v. Blas*, 2004 MP 26 ¶ 5 citing
4 *Commonwealth v. Martinez*, 4 N.M.I. 18, 20 (1993); Com. R. App. P. 9(c); Com. R. Crim. P.
5 46(c). A “substantial question” of law is one that is “fairly debatable” or “doubtful.” *Id.* citing
6 *United States v. Handy*, 761 F.2d 1279, 1283 (9th Cir. 1985).

7 8 **IV. DISCUSSION**

9 **A. Although Defendant Might Not Be a Flight Risk, She Does Pose a Danger to the** 10 **Community.**

11 Defendant argues that she is not a flight risk and does not pose a danger to the
12 community. Defendant states that she moved to Saipan 7 years ago and since then has made
13 Saipan her home. Defendant further states that she has significant family ties to Saipan and even
14 though she has been free on bond since December 8, 2009, she has not fled the jurisdiction, but
15 instead, has complied with the Court’s conditions of release. In addition, Defendant claims that
16 she does not pose a danger to the community since she has been a law-abiding citizen her entire
17 life.

18 The Government counters by arguing that Defendant is a convicted sex offender and is
19 no longer a law-abiding member of the community. The Court agrees.

20 Since Defendant is facing a substantial length of incarceration, the likelihood of flight is
21 substantial. More importantly, an individual such as Defendant, who has been convicted of
22 Sexual Abuse of a Minor in the First Degree does pose a danger to the community. As such, this
23 factor weighs in favor of denying Defendant’s Motion.

24 **B. The Court Does Not Believe that the Appeal is Taken for the Purpose of Delay.**

25 The Court does not believe that Defendant is appealing her conviction for the purpose of
26

27 ¹ 6 CMC § 6402(b) provides: “[a]fter conviction bail may be allowed only if a stay of execution of the sentence
28 has been granted and only in the exercise of discretion by a court authorized to order a stay or by a judge thereof.” 6
CMC § 6402(b). Here, because the stay of execution is denied, the Court finds that Defendant’s request for bail is moot.

1 delay. Defendant has objected to the Court’s application of the “birthday rule” during the course
2 of trial and instead believes that the Court should have applied the Common Law “coming of
3 age” rule.² As such, this factor weighs in favor of granting Defendant’s Motion.

4 **C. The Appeal Does Not Raise a Substantial Question of Law or Fact Likely to Result**
5 **in Reversal or in an Order for a New Trial.**

6 The crux of Defendant’s appeal hinges on the age of the victim at the time of the alleged
7 offense. Defendant claims that the victim could have been 16 years of age during the time of the
8 sexual assault since the offense occurred “on or about August, 2009, until the first week of
9 September, 2009.” Defendant argues that because the victim’s 16th birthday was on September
10 6, 2009, had the Court given the “coming of age” jury instruction, the jury might have returned a
11 not guilty verdict. Defendant bases this belief on the fact that the evidence presented at trial was
12 that the offense occurred “before my birthday,” with no other information given.³

13 Under the Common Law “coming of age” rule the age of an individual is determined on
14 the first moment of the day preceding his or her actual birthday. Defendant claims that if the
15 Court were to apply this rule, Counts I, II, and III of the Indictment would have been dismissed
16 since the Commonwealth would not have been able to satisfy the age element required under
17 either of these Counts. To support her position, Defendant cites case law from multiple
18 jurisdictions which applied the Common Law rule absent statutory and/or case law.

19 Although both parties supply the Court with ample case authority supporting each of
20 their positions, the case of *Commonwealth of Pennsylvania v. Delmar Hooks*, which was not
21 cited by either party is directly on point. *Commonwealth of Pennsylvania v. Delmar Hooks*, 921

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23 ² Under the “coming of age” Common Law rule, a person reaches a given age at the earliest moment of the day
24 before his day of birth. *In the Matter of Terry Anton Robinson*, 120 N.C. App. 874, 876 (1995). Under the more modern
“birthday rule” a person attains a given age on the anniversary date of his or her birth. *Id.* at 877.

25 ³ In sum, Defendant is claiming that if the sexual assault occurred on September 5, 2009, the victim would have
26 been 16 years old, regardless of the fact that the victim’s actual birth date fell on the following day. Notwithstanding
27 that argument, the jury concluded that the sexual assault occurred before the victim’s 16th birthday based on the evidence
28 presented to the Court. Therefore, Defendant did not establish the reasonable doubt necessary to convince the jury that
the sexual assault happened before September 6, 2009. In addition, the Court did not give the “coming of age” jury
instruction for the reasons set forth in this Order. Finally, giving a “coming of age” jury instruction would only have
aided the defense if the sexual assault occurred on September 5, 2009 and not on any other day in August or during the
first week of September.

1 A.2d 1199 (2007).

2 In *Commonwealth of Pennsylvania v. Delmar Hooks*, Appellant’s sexual encounter with
3 the victim occurred one day before her 16th birthday. Appellant relied on the Common Law rule
4 stating that a person reached a given age on the day before her birth date to argue that
5 insufficient evidence established that the victim was under 16. The appellate court disagreed,
6 finding that the
7 legitimate state interest of the sexual abuse of a minor statute was to protect minors under 16
8 from older teenage and adult sexual aggressors. As such, the court found that the use of the
9 Common Law rule perpetuated an injustice upon children, which the law and society had
10 expended great legislative and social energies to correct.

11 In the Commonwealth, the rules of the common law as expressed in the Restatements of
12 Law as approved by the American Law Institute serve as the applicable rules of decision, in the
13 absence of written or local customary law to the contrary. 7 CMC § 3401; *Ito v. Marco Energy,*
14 *Inc.*, 4 N.M.I. 46 (1993). If a NMI court is to formulate a common law based on public policy,
15 the policy must be implicated in either local law or a recognized need to safeguard the welfare of
16 the general public. *Castro v. Hotel Nikko Saipan, Inc.*, 4 N.M.I. 268 (1995).

17 When a Common Law rule, in effect, would pervert justice and contravene legislative
18 and societal needs, and it is not in the best interest of justice or public policy, a change by the
19 court is mandated. *Commonwealth of Pennsylvania v. Delmar Hooks*, 921 A.2d 1199, 1208
20 (2007).

21 In the Legislative findings of the Sexual Abuse Law, Public Law 12-82, the Legislature
22 made its intent clear that more severe penalties were necessary to ensure the *protection of the*
23 *community* and to adequately deter persons from engaging in this type of conduct. PL 12-82,
24 (Emphasis Added). Therefore, it is “ludicrous to suggest that the legislature of this
25 Commonwealth, who enacted a statute to protect children from sexual aggressors and that is
26 dependent upon the age of a particular victim for its enforcement, intended that for the purposes
27 of the statute, child victims would turn [16] the day before their [16]th birthday.” *Commonwealth*
28 *of Pennsylvania v. Delmar Hooks*, 921 A.2d 1199, 1208 (2007).

1 Here, the facts as found by the jury, remain that the victim was under the age of 16 when
2 the abuse was committed upon him. The Court did not provide its own interpretation of the
3 unequivocal statute applicable to the case, nor did it infer as to what point close to 16 years of
4 age a victim would have to be for the statute not to apply. The Court followed the law as written
5 and acknowledged that public law represents the will and sentiment of the people of the
6 community.

7 The Court concluded that when it comes to sexual abuse of a minor, the public has
8 spoken loud and clear, with harsh sentences such as a 30 year and 10 year jail terms for the 1st
9 and 2nd degree sexual abuse of a minor, respectively. Applying the Common Law “coming of
10 age” rule would be contrary to the will of the people as expressed through our laws, which the
11 Court is bound to follow.

12 Moreover, the “effect of using the Common Law rule to determine age would be to
13 provide a criminal wrongdoer a pass on the extreme harm perpetrated against a child by the
14 medieval fiction that a child reaches 16 years of age the day before his birthday for penal law
15 purposes.” *Commonwealth of Pennsylvania v. Delmar Hooks*, 921 A.2d 1199, 1210 (2007). As
16 such, the Court concluded that a person reaches a given age on the date of his or her birth and
17 not on the earliest part of the day before the individual’s said birthday.

18
19 **V. CONCLUSION**

20 After a full and close analysis and consideration of all that Defendant has offered, the Court
21 is of the opinion that Defendant has failed to satisfy the requirements necessary for issuing a stay.
22 As such, Defendant’s Motion for a Stay of Execution is hereby **DENIED**.

23
24 **SO ORDERED this 18th day of October, 2010.**

25
26 /s/ _____

27 David A. Wiseman, Associate Judge

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