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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.  
  
JING XIN XIAO,  
D.O.B. 12/15/1969  
  
Defendant.

CRIMINAL CASE NO. 10-0097  
D.P.S. CASE NO. 10-003336

AMENDED ORDER RE: SENTENCE

**THIS MATTER** came before the Court for Sentencing on June 29, 2011 at 9:00 a.m. in Courtroom 223A of the Guma Hustisia Building. The Government was represented by Assistant Attorney General, Russell Lorring. The Defendant appeared in the custody of the Department of Corrections with counsel, Adam Hardwicke, Chief Public Defender. Also present was the Interpreter, Jean Shi.

On March 18, 2011 the Jury found the Defendant **Guilty** of the offense of **Trafficking of a Controlled Substance**, in violation of **6 CMC § 2141(a)** as charged in **Count I**.

On April 6, 2011 the Court found the Defendant **Guilty** of the offense of **Illegal Possession of a Controlled Substance**, in violation of **6 CMC § 2142(a)** as charged in **Count II**.

SENTENCE

The sentencing of an individual convicted of a crime is perhaps one of the most important functions in the criminal justice system and it is my responsibility to perform such task.

1 In doing so, I must consider the protection of the public, the rights of the victims and the  
2 gravity of the crime, including its consequences. The Court must also consider the background and  
3 record of the Defendant and give serious consideration to the goals of sentencing and assure the ends  
4 of justice are satisfied.

5 The Defendant in this case is a 41 year old man with no prior criminal record. However he  
6 has been convicted of a crime which the people of the CNMI, through their representatives, have  
7 demanded a most severe sentence.

8 It was stated in the findings and purposes of P.L. No. 11-24 codified in 6 CMC § 2141(b)(1),  
9 that:

10 “The Legislature finds the use of dangerous, highly addicting narcotic  
11 substances has become epidemic in the Commonwealth. In the  
12 Legislature’s opinion it has become necessary to impose severe  
penalties on those who, without conscience, would so prey on our  
society as to threaten its very survival.”

13 Prior to announcing the sentence in this matter the Court finds it necessary to make a  
14 statement suggesting that the Legislature revisit the mandatory sentencing provided for in 6 CMC  
15 § 2141(b)(1).

16 Mandatory incarceration statutes curb the discretion of prosecutors and judges over certain  
17 offenses or types of offenders. The divesting of prosecutors and judges of the time honored control  
18 over criminal sentences is of concern because discretion is the touchstone of a judicial sentence. A  
19 sentence should reflect a deliberate sentencing plan and be tailored to the particular offense and  
20 offender, such as the criminal history of Defendant, whether the Defendant was serving on probation  
21 at time of the offense, whether there was harm to any victim, whether the offense was committed  
22 at a school or other public institution, and whether any weapons were used during the crime. In a  
23 mandated sentence such as this, these and other factors have no bearing on Defendant’s sentence.

24 In this case, Defendant has no record of a criminal conviction and the amount of drugs he  
25 was convicted of was 3 grams. The Court, under the mandatory sentencing statute cannot factor  
26 these things into its sentence. This Defendant, under the mandated sentence, is to be penalized and  
27 treated the same as a defendant who may be convicted of trafficking 5 to 100 kilos of ice, who has  
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1 several prior convictions, and who may have sold ice to school kids. The Defendant in this case  
2 having none of those aggravating factors will nonetheless receive a mandatory sentence of 25 years  
3 if the Court imposes a prison sentence. Consequently, there is a gross disproportionality which the  
4 Court urges the Legislature to look into.

5 It is interesting to note that Public Law 11-24 amended the previous law with respect to  
6 importing methamphetamine or ice into the Commonwealth providing that if its more then 5 grams  
7 the mandatory sentence of 25 years with no parole or suspension applies while the trafficking of ice  
8 does not have any weight requirement. This is troubling because for the most part, there would not  
9 be any trafficking, or little of it, if there was no importation.

10 Most jurisdictions enumerate within their criminal code the intended purposes of sentencing.  
11 Notwithstanding the findings and purposes in this particular statute, the CNMI does not have any  
12 intended general sentencing purpose stated in the Code.

13 In view of the arguments presented by the parties, it appears that the CNMI Supreme Court,  
14 in *Commonwealth v. Diaz*, has ruled that there are 3 sentences a Court can order when sentencing  
15 a defendant pursuant to 6 CMC § 2141. Based on Supreme Court precedent, as well as the concurred  
16 upon representations of counsel, the Court will continue this sentencing to **August 10, 2011 at 9:00**  
17 **a.m. in Courtroom 223A**

18 The Defendant is hereby remanded to the Department of Corrections.

19  
20 **SO ORDERED** this 29<sup>th</sup> day of June, 2011.

21  
22 /s/  
23 DAVID A. WISEMAN  
24 Associate Judge  
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