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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.)
)
 RAYMOND FALCON,)
)
 Defendant.)
 _____)

**TRAFFIC CASE NO. 05-03100
DPS Citation No. 52008**

**ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS**

I. INTRODUCTION

THIS MATTER came before the court on February 22, 2012 on the Motion of Defendant, Raymond Falcon, to dismiss with prejudice the complaint against him for failure to prosecute. Defendant was represented by Ramon Quichocho, Esq. and Assistant Attorney General Nicole Driscoll represented the Commonwealth. After reviewing the written and oral arguments of the parties the Court **GRANTS** Defendant’s motion to dismiss.

II. FACTUAL AND PROCEDURAL BACKGROUND

On July 16, 2005, over six years ago, Defendant was issued a traffic citation charging him with violations of 9 CMC §§ 5301(a)(1), 7104(a), 7105(a)(2) and 7106(c). Various hearings were held ultimately resulting in a November 7, 2005 status conference, at which Defendant failed to appear. A bench warrant issued for his arrest, but Defendant later made a motion to quash through counsel. It is

1 unclear from the file what actions, if any, the Government took if any until the matter was not placed
2 back on calendar in 2011.

3 Defendant now files this motion to dismiss for failure to prosecute and violations of his rights
4 to a speedy trial.

6 **III. DISCUSSION**

7 Defendant seeks a dismissal pursuant to Commonwealth Rules of Criminal Procedure, Rule
8 48(b), which grants the Court the power to dismiss charges if there is unnecessary delay in bringing a
9 defendant to trial. Defendant also cites the Sixth Amendment right to a speedy trial as one of his
10 grounds for dismissal of the citation. “However, [] prosecutorial delay need not rise to the level of a
11 Sixth Amendment violation for the Court to invoke its ‘inherent power,’ as provided by Rule 48(b), to
12 dismiss a case that has not been timely prosecuted.” *CNMI v. Erwin*, Crim No. 03-0203 (NMI Super.
13 Ct. April 21, 2005) (Order Granting Motion to Dismiss for Failure to Prosecute) (citing *United States*
14 *v. Hatstrup*, 763 F.2d 376 (9th Cir. 1985); *United States v. Sears, Roebuck, & Co., Inc.*, 877 F.2d 734
15 (9th Cir. 1989)).

16 The U.S. Supreme Court established four factors to consider in examining a potential violation
17 of the Sixth Amendment with regard to speedy trial: “[W]hether delay before trial was uncommonly
18 long, whether the government or the criminal defendant is more to blame for that delay, whether, in due
19 course, the defendant asserted his right to a speedy trial, and whether he suffered prejudice as the delay's
20 result.” *See Dogget v. United States*, 505 U.S. 647, 651 (1992) (citing *Barker v. Wingo*, 407 U.S. 527,
21 530). Defendant has cited substantial delay of over 6 years, prejudice as a result of the delay in his
22 diminished ability to present a defense including the death of his then passenger Ben Sanchez. Further,
23 Defendant called the Court repeatedly to follow up on his case. (*See Def’s Ex. 2., p. 2.*) While
24 Defendant did fail to appear at the November 7, 2005 hearing, which resulted in a bench warrant
25 issuing, the Court finds, in toto, the factors weigh in favor of dismissal. *See Barker v. Wingo*, 407 U.S.
26 514, 522 (1972) (holding that while a serious remedy, dismissal is the only possible remedy for a
27 violation of speedy trial rights).

