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FOR PUBLICATION

COMMONWEALTH OF COURT
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CLERK OF COURT

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

**COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,**

Plaintiff,

v.

RAYMOND N. SAKA,

Defendant.

CRIMINAL CASE NO. 09-0206C

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

I. INTRODUCTION

THIS MATTER came before the Court on June 21, 2012, for a hearing on a motion to dismiss revocation proceedings. Raymond N. Saka (“Mr. Saka” or “Defendant”) was represented by Assistant Public Defender, Daniel Guidotti. The Commonwealth was represented by Assistant Attorney General, Darren Robinson. Based on a careful review of the record, filings, oral argument, and applicable law, Defendant’s Motion to Dismiss is **GRANTED.**

II. FACTUAL AND PROCEDURAL BACKGROUND

This case concerns the time frame of Defendant’s probationary term. On October 13, 2010, Defendant pled guilty to Assault and Battery, pursuant to the Court’s acceptance of a Plea Agreement. The Court reviewed the audio recording at sentencing, from which the

1 following facts were ascertained.¹ Then Judge Ramona Manglona,² (“Judge Manglona”) 2 addressed Defendant’s change of plea along with several others on October 13, 2010. The 3 first time she called Mr. Saka’s case she: (1) asked whether he had served any incarceration 4 time and whether there was any restitution in the case; (2) read the sentence of six months 5 all suspended except for fifteen days; and (3) addressed some handwritten notes on the Plea 6 Agreement, in reference to when Mr. Saka was to serve his remaining fourteen days. The 7 Plea Agreement indicated that Mr. Saka was to report to Department of Corrections on 8 October 25, 2010 at 5 p.m. and be released on November 9, 2010 at 5 p.m. After addressing 9 those preliminary issues Judge Manglona expressed the Court’s willingness to go forward 10 on the plea and moved on to the next defendant, reminding Mr. Saka that he was not done 11 yet. 12

13 yet. 14 The second time Judge Manglona addressed Mr. Saka she went over the sentence in 15 the Plea Agreement, but made no mention of the probationary term. After going over 16 Defendants’ constitutional rights, and the effect of a plea, Judge Manglona addressed the 17 several defendants as a group saying, 18

19 I’ll be placing all of you on probation . . . and while on probation 20 you’ll be expected to perform everything I’ll be ordering you to do, 21 pursuant to your plea agreement. If you walk out and not do 22 anything then we won’t be talking about the Assault and Battery 23 charge or the drug charge, we’ll be talking about did you perform 24 everything you were ordered to do on October, 13, 2010.

25 The final time Judge Manglona addressed Mr. Saka she: (1) listed the charges—six 26 months all suspended except for fifteen days with credit for one day time served; (2) listed 27

28 ¹ On October 13, 2010, then Associate Judge Ramona Manglona presided over Courtroom 220 and sentenced the Defendant. Ramona Manglona was appointed to the Federal District Court for the Northern Mariana Islands to serve as Chief Judge and took her oath of office July 30, 2011. As a result, the undersigned who now presides over courtroom 220 has no first-hand knowledge of the proceedings on October 13, 2010.

² See note 1.

1 the reporting and release dates; and (3) said, “You are hereby placed on probation for one
2 year.” Following this pronouncement she voiced her concern about Mr. Saka facing
3 revocation prior to his incarceration. One of the conditions of probation was an order that he
4 stay away from Hans Ngiramos, the victim (Plea Agreement 3). Judge Manglona,
5 apparently learned³ that Mr. Saka was staying with Hans. She said:

7 One of the concerns is . . . I don’t want you to go home and
8 possibly face revocation. . . . How are we going to deal with the
9 stay away then? . . . I raise it immediately because I don’t want
10 you getting picked up for a violation because next term is to stay
11 away from Hans. . . .

12 Judge Manglona did not mention whether probation would run concurrent or consecutive,,
13 with the period of actual incarceration or the suspended portion of the sentence.

14 On October 13, 2010 the Court also issued a Minute Order indicating the
15 Defendant’s sentence as follows, “Sentenced to 6 months imprisonment all suspended
16 except for 15 day with credit for 1 day served; Defendant shall report to Dept. of Corrections
17 on October 25, 2010 5pm and be released on November 9, 2010 5pm ; 1 year supervised
18 probation,” *Commonwealth v. Saka*, No. 09-0206C (NMI Super. Ct. Oct, 13 2010) (Minute
19 Order).

20 The Plea Agreement provides the following language related to the probation,
21 ***“Defendant shall, upon changing his plea to guilty, be placed on supervised probation for***
22 ***one (1) year.”*** Two days after sentencing the Court issued a Judgment of Conviction and
23 Commitment Order (“JCO”), indicating the same sentence as the Minute Order.
24 *Commonwealth v. Saka*, No. 09-0206C (NMI Super. Ct. Oct, 15 2010) (Judgment of
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28 ³ The exact exchange is unclear from the record.

1 Conviction and Commitment Order at 2). The JCO indicated that Defendant was to report
2 to the Office of Adult probation on October 13, 2010. *Id.*

3 Defendant served fourteen days and was released from Department of Corrections on
4 November 9, 2010. On November 24, 2010, he signed conditions of probation with the
5 Office of Adult probation which begins, "In accordance with authority conferred by the
6 Probation Law, you have been placed on probation on this date, October 13, 2010, for a
7 period of One (1) year." *Commonwealth v. Saka*, No. 09-0206C (NMI Super. Ct. June 17,
8 2011) (Conditions of Probation).

9
10 The initial review hearing was set for December 15, 2010. At the December 15,
11 2010 hearing, another review hearing was set for June 8, 2011, and then continued until
12 October 26, 2011.

13
14 On October 26, 2011 the Office of Adult probation moved to revoke Defendant's
15 probation. On December 5, 2011, the Commonwealth filed a Notice of Revocation Hearing.
16 Defendant's probation has not been extended.

17
18 On June 12, 2012 Defendant filed a Motion to Dismiss Based on Lack of Subject
19 Matter Jurisdiction, ("Motion"). On June 15, 2012 the Commonwealth filed its Opposition
20 to Defendant's Motion to Dismiss, ("Opposition"), and on June 19, 2012 Defendant filed a
21 reply ("Reply").

22 **III. DEFENDANT'S MOTION TO DISMISS**

23
24 The Court must determine if it has subject matter jurisdiction over revocation
25 proceedings in this case. Defendant argues that the period of probation commenced on
26 October 13, 2010, the day of sentencing when the Defendant was ordered to report to the
27 Office of Adult Probation and therefore the term of probation expired October 12, 2011 and
28

1 the Court lacked jurisdiction to revoke probation on October 26, 2011. The Commonwealth
2 counters that the Court retains jurisdiction because the intent of the Court was for the term
3 of one-year probation to begin upon Defendant's release on November 9, 2010 and would
4 have expired on November 8, 2011, therefore the oral motion to revoke on October 26, 2011
5 was within the probationary period.

6
7 The Court has statutory authority to revoke probation, and re-impose a suspended
8 sentence where sentencing conditions are not met. 6 CMC §§ 4105(a), (j). However, the
9 Court cannot maintain jurisdiction over revocation proceedings where the revocation is not
10 initiated prior to the time when probation ends. *See* 6 CMC § 4105(d) (tolling probation
11 until disposition of revocation proceedings upon filing a petition to revoke).⁴

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13 Whether revocation proceedings were initiated prior to the time when Defendant's
14 probation ends, conferring jurisdiction,⁵ depends on when his probation began.

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20 ⁴ By enacting 6 CMC § 4105(d), the tolling statute, the Legislature meant to allow the Court to keep
21 jurisdiction for the duration of revocation proceedings, so long as revocation was initiated within the
22 probationary period, addressing the problem illustrated by earlier Superior Court cases where the court was
23 forced to dismiss because it lost jurisdiction prior to the completion of revocation proceedings. Public Law 15-
24 46 provides:

25 The Act also provides for tolling the period of probation upon the filing of a
26 petition to revoke probation Currently, if someone is on probation for six
27 months, and the Commonwealth receives notice from the probation officer that
28 he has failed to pay his restitution after five months, the Attorney General must
notify the court, serve him with notice of his violation, secure his attendance in
court, adjudicate his violation and revoke his probation, *all before his probation
expires*. . . . This gives the probationer who intends to avoid his obligations an
unfair advantage, and makes the system appear ineffective. Tolling of the
probationary period will resolve this problem. PL 15-46 § 2.

⁵ 6 CMC § 4105(d).

1 **A. PLEA AGREEMENT**

2 Defendant argues that he is entitled to have the Court uphold the plain language of
3 his plea agreement, which indicates that the probation started on October 13, 2010 and
4 ended one year later.

5 A criminal defendant has a due process⁶ right to enforce the terms of his plea
6 agreement. *Santobello v. New York*, 404 U.S. 257, 261-62 (1971). In the Commonwealth
7 plea agreements are governed by Rule 11(e) of the Commonwealth Rules of Criminal
8 Procedure. The rule sets forth three types of plea agreements. Pursuant to the rule the
9 Commonwealth may do any of the following: “(A) move for dismissal of other charges; or
10 (B) make a recommendation, or agree not to oppose the defendant's request, for a particular
11 sentence, with the understanding that such a recommendation or request shall not be binding
12 upon the court; or (C) agree that a specific sentence is the appropriate disposition of the
13 case.” NMI R. Crim. P. 11(e)(1)(A)-(C).

14 The parties entered the Plea Agreement pursuant to NMI R. Crim. P. 11(e)(1)(C).
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16 (Plea Agreement 2.) “[T]he plain language of Rule 11 makes clear that when the court is
17 presented with an [(e)(1)(C)] plea agreement, the court may only accept or reject the
18 agreement in its entirety.” *Commonwealth v. Ge Ai Ping*, 1999 MP 16, ¶ 7; NMI R. Crim. P.
19 11(e)(2) (“If the agreement is of the type specified in subdivision (e)(1)(A) or (e)(1)(C), the
20 court may accept or reject the agreement . . .”). “[A] Rule [11(e)(1)(C)] stipulated sentence
21 ‘binds the court once the court accepts the plea agreement.’” *Morgan v. United States Dist.*
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26 ⁶ Article I, Section 5 of the Commonwealth Constitution provides that “[n]o person shall be deprived of life,
27 liberty or property without due process of law. NMI Const. art. I § 5. “Federal due process guarantees are
28 [also] applicable in the Commonwealth pursuant to Section 501 of the Covenant.” *Castro v. Castro*, 2009 MP
8, ¶16.

1 *Court (In re Morgan)*, 506 F.3d 705, 709 (9th Cir. 2007) (quoting Fed. R. Crim P.
2 11(c)(1)(C)).⁷

3 In this case, Judge Manglona accepted the Plea Agreement, and the Court and parties
4 are therefore bound by its terms. *Id.*

5 Plea agreements are construed according to contract principles. *United States v.*
6 *Harris*, 628 F.3d 1203, 1205 (9th Cir. 2011); *United States v. Riera*, 298 F.3d 128, 133 (2d
7 Cir. 2002). Pursuant to such principles, terms are given their plain meaning unless doing so
8 would defeat the parties' intent. *Fusco v. Matsumoto*, 2011 MP 17, ¶ 27 (citing
9 *Commonwealth Ports Auth. v. Tinian Shipping Co.*, 2007 MP 22 ¶ 17). Intent is derived
10 from "what [the agreement] actually stated, and not [] what [the parties] allegedly meant."
11 *Id.* "In the absence of any ambiguity, we will find intent in the plain meaning of the
12 contractual language." *Id.* (citing *Dynasty Hous., Inc. v. McCollum*, 832 So. 2d 73, 75 (Ala.
13 Civ. App. 2001)); *see also United States v. Clark*, 218 F.3d 1092, 1095 (9th Cir. 2000) ("If
14 the terms of the plea agreement on their face have a clear and unambiguous meaning, then
15 this court will not look to extrinsic evidence to determine their meaning.").

16 In the plea agreement context, any ambiguities must be resolved in favor of the
17 defendant. *United States v. Watson*, 582 F.3d 974, 986 (9th Cir. 2009) ("Plea agreements
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24 ⁷ "Because the Commonwealth Rules of Criminal Procedure are patterned after the Federal Rules of Criminal
25 Procedure, this Court has long held that it is appropriate to consult . . . the federal rules when interpreting the
26 Commonwealth Rules of Criminal Procedure." *Commonwealth v. Laniyo*, 2012 MP 1, ¶ 6 (quoting
27 *Commonwealth v. Attao*, 2005 MP 8 ¶ 9 n.7). The stipulated sentence provision at issue 11(e)(1)(C) was
28 renumbered effective December 1, 2002, as part of a general re-styling of the Federal Rules. Fed. R. Crim. P.
11 advisory committee notes. The current federal rule which corresponds to NMI R. Crim. P. 11(e)(1)(C) is
numbered 11(c)(1)(C). The current rule adds language indicating that stipulated sentences are binding. Fed.
R. Crim. P. 11(c)(1)(C). ("[S]uch a recommendation or request binds the court once the court accepts the plea
agreement.").

1 are interpreted using contract principles with any ambiguity construed in the defendant's
2 favor.").

3 The Plea Agreement, which Judge Manglona accepted, reads in pertinent part that
4 the ***“Defendant shall, upon changing his plea to guilty, be placed on supervised probation
5 for one (1) year.”***

6 The Commonwealth at oral argument suggested that the meaning of “upon,” in the
7 preceding sentence, does not indicate immediacy, but instead, simply means that at some
8 unspecified time after Defendant pleads guilty he will be placed on probation. The
9 Commonwealth argued that the probation term would need additional language, such as
10 “immediately,” in order to mean that Defendant’s probation starts as soon as he pleads
11 guilty. The Court disagrees.
12

13 Conspicuously absent is any language in the Plea Agreement that qualifies, “upon
14 changing his plea to guilty,” such as “upon release,” “at the end of the sentence,” or any
15 other language indicating a clear intent for the probation to begin after the period of
16 incarceration.
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18 The meaning of “upon” in this case is significant. One definition of “upon” is
19 “immediately or very soon after,” as in, “She went into mourning *upon* her husband’s
20 death.”⁸ This is exactly the usage here.
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22 Several uses of the word “on,” a synonym of “upon,”⁹ also support this usage. For
23 example, “on” is “used to indicate a time or an instance when something takes place,” as in
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⁸ Dictionary.com, <http://dictionary.reference.com/browse/upon?s=t>.

27 ⁹ Merriam Webster’s defines “upon” as a formal preposition meaning “on.” Merriam Webster Online,
28 <http://www.merriam-webster.com/dictionary/upon>.

1 “on arriving home, I found your letter,”¹⁰ or “On my way home, I saw a car accident.”¹¹ On
2 is also used to mean “immediately after (something),” as in “You’ll be required to pay *on*
3 delivery of the package.”¹² This is precisely the use of the word “upon” in this case.
4 Moreover, this type of use is commonplace in criminal sentencing. For example, when a
5 court indicates to a defendant that “upon pleading guilty” they are giving up certain rights,
6 the ordinary meaning is that “as soon as” they plead guilty those rights are gone. This
7 situation is analogous to Mr. Saka’s case.

9 The ordinary meaning of upon is “as soon as,” which is a commonplace usage
10 indicating immediacy in the sentencing context. Therefore, the plain meaning of “upon
11 changing his plea to guilty, be placed on supervised probation for one (1) year,” naturally
12 means that Defendant will be placed on probation as soon as he pleads guilty.

14 The Commonwealth’s argument that additional language would be needed to
15 indicate immediacy such as “immediately upon pleading guilty” is not persuasive. Rather,
16 the plain meaning of “upon” would render the word “immediately” superfluous in this
17 context.

19 This reading is consistent with the parties’ reasonable and objective intent, as
20 expressed in the Plea Agreement. First, when the probationary term is read together with the
21 other sentence, such a reading does not render the probationary term meaningless. Read
22 together, Defendant would be subject to revocation prior to incarceration,¹³ during
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25 ¹⁰ Merriam Webster Online, <http://www.wordcentral.com/cgi-bin/student?book=Student&va=on>.

26 ¹¹ Merriam Webster Online, <http://www.learnersdictionary.com/search/on>.

27 ¹² *Id.*

28 ¹³ It is worth noting that the Commonwealth has not yet addressed the issue of whether probation can be
revoked based on activities which occurred after sentencing but before any period of incarceration or
probation. A majority of jurisdictions have held that the Court may revoke for activities prior to a term of

1 incarceration, and after, so long as it was within the one-year period that the relevant
2 conditions would be in place. Second, although there is no language indicating concurrent
3 sentences, there is nothing uncommon about such a sentence,¹⁴ and no language to the
4 contrary. Finally, given that there was such a short incarceration period in this case,
5 indicating that a fairly lenient sentence¹⁵ was deemed appropriate by the parties, it would not
6 be unreasonable for the Commonwealth and Defendant to contemplate that the probationary
7 sentence would overlap with the incarcerated portion of the suspended sentence.¹⁶
8

9 Based on the unambiguous language of the Plea Agreement, the Court need not look
10 to extrinsic evidence to determine the intent of the parties. Moreover, because the Court
11 finds that the Court accepted the Plea Agreement, binding the Court to its terms, and the
12 Plea Agreement is unambiguous, it also need not address the Court's intent.¹⁷
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15 incarceration even if the probationary term is set to run consecutive to the incarceration and has not begun yet.
16 Still, given that there is no such rule in the Commonwealth to date, reasonable parties may well have
17 contemplated that a concurrent probationary term would serve to cover this "gap" in jurisdiction.

18 ¹⁴ In federal court, terms of probation run concurrently with terms of imprisonment which are less than thirty
19 days. 18 USCS § 3564(b). Under the Local Rules of the Central District of California, a term of probation is
20 presumed to run concurrently with incarceration unless the judgment expressly states otherwise. C.D. Cal.
21 Crim. R. 10.3. It is also not uncommon for state courts to impose probation concurrently with other terms. *See*
22 *e.g.*, *State v. Rau*, 129 N.H. 126, 129-131 (1987) ("We find no merit to the State's contention that a term of
23 imprisonment and a term of probation can only be meaningfully implemented if they are imposed
24 consecutively. That the defendant is simultaneously serving a term of probation and a term of incarceration is
25 not unique."):

26 ¹⁵ Assault and Battery is punishable by a term of imprisonment not more than one year and a fine not
27 exceeding \$1000. 6 CMC § 1202(b); 6 CMC § 4101(c).

28 ¹⁶ *See* note 13.

¹⁷ Generally "[t]he intent of the sentencing court must guide any retrospective inquiry into the term and nature
of a sentence." *United States v. Einspahr*, 35 F.3d 505, 506 (10th Cir. 1994). Courts typically look to the
language of the sentencing order and any oral pronouncement which created the probationary sentence to
determine when probation began. *United States v. King*, 990 F.2d 190, 192 (5th Cir. 1993) (reasoning that in
interpreting when a probation period commences, the court's intent, found in the language used to create the
probation controls). Even assuming arguendo that the plea agreement was not binding and unambiguous, the
record unequivocally demonstrates that the Court intended probation to begin on October 13, 2010.

1 Defendant pled guilty on October 13, 2010, and pursuant to the terms of his Plea
2 Agreement was placed on supervised probation for one year. Consequently, his probation
3 began that day and expired on October 12, 2011, unless the period of incarceration was
4 “tolled.”

5 **B. TOLLING**

6 At the hearing on the motion, the Commonwealth advanced the argument that while
7 Defendant was incarcerated his probation “tolled.” Nothing in the Plea Agreement indicates
8 an agreement to toll probation; therefore the Court looks to the statutory scheme to
9 determine if the incarceration was automatically tolled.
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11 Just as the power to impose probation is statutory, 6 CMC § 4105(a), so too is the
12 power to revoke or alter probation. 6 CMC § 4105(a), (j); *Chism v. People*, 80 P.3d 293,
13 294 (Colo. 2003) (“[P]robation is a creature of statute and its terms must be derived from
14 statute.”); *see also Matthews v. State*, 304 Md. 281, 284-285 (1985) (“A judge has no
15 inherent power to suspend the execution of all or a portion of the sentence and place a
16 defendant on probation.”). The revocation statutes grant the Court discretion to determine
17 whether probation begins at sentencing or upon release from any period of incarceration, *see*
18 6 CMC 4105(b)(1),(2), and to extend probation up to the maximum probationary sentences.
19 6 CMC 4105(j), (b)(1)-(2).
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22 The statutes provide for tolling in only one situation: Where the revocation is
23 brought within the probationary period, the revocation proceedings are tolled. 6 CMC §
24 4105(d). In other words, the clock stops as soon as the Commonwealth or the Office of
25 Adult Probation moves to revoke. *Id.* There is no similar statute for tolling periods of
26 incarceration. *See generally* 6 CMC § 4105. Consequently, the fourteen days Defendant
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1 spent incarcerated did not toll his probation and Defendant's probation expired on October
2 12, 2011. Thus, on October 26, 2011, when the oral revocation motion was made,
3 Defendant's term of probation had already expired and the Court lacked jurisdiction over the
4 revocation.

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6 **IV. CONCLUSION**

7 For the aforementioned reasons the motion to dismiss is **GRANTED**.

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9 **IT IS SO ORDERED** this 13th day of July, 2012.

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14 Joseph N. Camacho, Associate Judge
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