

1 FOR PUBLICATION

2

2013 JUN 28 PM 3: 26

3

4

BY: *ADJC*
DEPUTY CLERK OF COURT

5

6

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

7

8

9

COMMONWEALTH OF THE NORTHERN)
MARIANA ISLANDS,)

CRIMINAL CASE NO. 13-0166E
DPS Case No. 13-004442

10

Plaintiff,)

11

12

v.)

ORDER DENYING DEFENDANT'S
MOTION TO DISMISS,

13

PAUL SEMENS,)
D.O.B. 8/29/62)

FINDING PROBABLE CAUSE
FOR CONTEMPT OF COURT

14

15

Defendant.)

16

17

18

I. INTRODUCTION

19

20

21

22

23

24

25

26

27

28

THIS MATTER came before the court on June 27, 2013, at 9:00 a.m. in Courtroom 223A for the preliminary hearing of Paul Semens (“Defendant”). The Commonwealth of the Northern Mariana Islands (“the Commonwealth”) sought to establish probable cause for one count of contempt and one count of violating an order of protection. Defendant moved to dismiss both charged counts. The Court denied Defendant’s motion to dismiss as to the count of violating an order of protection, finding probable cause existed. As to the count of contempt, the Court took the matter under advisement to determine whether criminal contempt is an available sanction for violation of what could be deemed a probation condition. Defendant was represented by Assistant Public Defender Eden Schwartz. The Commonwealth was represented by Assistant Attorney General Nicole Driscoll. After considering the oral arguments of the parties, the Court issues the following decision.

1 **II. DISCUSSION**

2 On April 3, 2013, Defendant pled guilty to one count of contempt for violating a court order of
3 protection. On April 10, 2013, the court handling the matter issued a judgment and conviction order, accepting
4 the plea agreement entered into by the parties and setting forth certain terms and conditions. Defendant's
5 sentence was suspended and he was placed on probation. Defendant was ordered to pay probation fees, to
6 perform community service, to have no contact with the victim for the period of probation, and to obey all laws
7 as well as rules of the Office of Adult Probation. The judgement and conviction order warned that failure to
8 comply with the conditions would constitute a violation of the terms and would subject Defendant to extension
9 or revocation of probation or contempt of court.

10 Defendant argues the condition in the judgment and conviction order is a condition of probation and
11 criminal contempt is not an available sanction for violation of a probation condition. Defendant asserts the
12 power to revoke is imposed by statute and revocation is the only remedy for a probation violation, directing the
13 Court to several cases outside the CNMI that have held that violation of a probation condition is not punishable
14 by a separate contempt action.

15 6 CMC § 3307 provides that any person who resists or refuses to comply with a lawful order of the court
16 is guilty of criminal contempt. The majority of jurisdictions have considered the question of whether a court
17 can punish a violation of a condition of probation as a contempt of court, and have held, for various reasons, that
18 criminal contempt is not an available sanction for a violation of a probation condition. *See People v. Johnson*,
19 20 Cal. App. 4th 106, 111 (Cal. App. 2d Dist. 1993) (holding violation of a condition of probation is not
20 punishable by a separate contempt action); *Alfred v. State*, 758 P.2d 130, 131-33, (Alaska Ct. App. 1988) (“[A]
21 court may not invoke its contempt power to punish a defendant for a probation violation, at least when the
22 defendant has not been warned of this possibility.”) (finding a majority of authorities in agreement with their
23 view: “Our research reveals only one jurisdiction that permits a court to invoke its contempt power as a sanction
24 for a violation of a probation condition.”); *State v. Asuncion*, 120 Haw. 312, 321 (Ha. Ct. App. 2009) (reversing
25 a defendant’s conviction of criminal contempt for violation of a no-contact condition of probation because
26 criminal contempt was not an available sanction for a violation of a condition of probation as set forth by statute
27 and finding the majority of jurisdictions in accordance with this view); *Williams v. State*, 72 Md. App. 233, 239
28 (Md. Spec. App. 1987) (“[A] condition of probation may be enforced only through the power to revoke the

1 probation, not through contempt proceedings.”); *Commonwealth v. Nicely*, 326 S.W.3d 441, 448 (Ky. 2010)
2 (“[T]he overwhelming majority of jurisdictions that have considered this issue have concluded that holding a
3 defendant in contempt of court for violating conditions of probation offends fundamental principles of
4 fairness.”).

5 A minority of jurisdictions, including several Illinois courts, have held a violation of a condition of
6 probation can be punished by contempt for various reasons. *See People v. Patrick*, 83 Ill. App.3d 951, 954
7 (authorizing contempt proceedings as the only sanction for a violation of a term of probation because a court
8 has inherent contempt power and because the legislative scheme indicated that section of the code was adopted
9 recognizing inherent contempt power as an added sanction); *Jenney v. Iowa Dist. Court*, 456 N.W.2d 921, 923
10 (Iowa 1990) (upholding a contempt conviction rendered during a probation revocation proceeding based on an
11 Iowa statute providing that a defendant in violation of a condition of probation maybe either be held in contempt
12 and sentenced or probation may be revoked, requiring the defendant to served the sentence imposed or a lesser
13 sentence); *see also Sumrall v. State Cent. Collection Unit*, 150 Md. App. 290 (Md. Ct. Spec. App. 2003)
14 (holding a judge may order restitution as a condition of probation or as part of a sentence, making contempt
15 proceedings proper where restitution is ordered as part of a sentence, and revocation proceedings proper where
16 it is ordered as a condition of probation or parole).

17 Although it appears to be a general rule that contempt proceedings are not an available sanction for a
18 violation of a condition of probation, the Court considers whether the provisions that Defendant not have any
19 contact with the victim was ordered as part of the sentence or as a condition of probation. The order is entitled
20 “Judgment and Conviction Order”, and the provisions fall under the heading of “Sentence.” The provision
21 states Defendant shall not have any contact with the victim for the period of probation. A reading of this
22 provision seems to cut toward a finding that the provision was meant as a condition of probation, and not
23 ordered separately as part of the sentence.

24 The Court next considers the fact that Defendant was warned in the judgment and conviction order that
25 violation of any of the conditions would subject him to either revocation or contempt of court, in light of the
26 holding in *Alfred*, where the court found it could not invoke contempt proceedings for a probation violation, at
27 least not when the defendant had not been warned of the possibility. *See Alfred*, 758 P.2d at 135. Therefore,
28 without deciding whether contempt proceedings are proper in addition to revocation proceedings for a violation

1 of a condition of probation, the Court finds that even if revocation proceedings are a possible remedy for such
2 a violation, it is not an exclusive one, and Defendant was warned of the possibility that violation of the said
3 April 3, 2013 Order would subject him to extension or revocation of probation or contempt of court. Therefore,
4 the Court finds probable cause established as to count one for contempt and further finds probable cause that
5 Defendant may have committed this crime.

6
7 **So ORDERED** this 28th day of June, 2013.

8
9 
10 _____
11 David A. Wiseman, Associate Judge

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28