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FOR PUBLICATION

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

COMMONWEALTH OF THE)	CRIMINAL CASE NO. 11-0304B
NORTHERN MARIANA ISLANDS)	
)	
Plaintiff,)	ORDER REGARDING
)	PLEA AGREEMENT
v.)	
)	
JUN QING CHEN,)	
)	
Defendant.)	

I. INTRODUCTION

THIS MATTER came before the Court on Thursday, August 1, 2013 at 2:00 p.m. in Courtroom 202 on a continuation of the July 26, 2013 change of plea hearing, during which Defendant moved to enforce the global plea agreement filed with the Court on July 15, 2013. The Commonwealth of the Northern Mariana Islands ("Commonwealth") was represented by Assistant Attorney General Margo A. Brown ("AAG Brown"). Defendant Jun Qing Chen ("Chen") was represented by Nadeah I. Vali, Esq. ("Ms. Vali") and Michael White, Esq.

II. BACKGROUND

Chen is a criminal defendant in two separate cases: the case at bar, Criminal Case Number 11-0304B, and Criminal Case Number 13-0080C. Chen, through his attorneys, was in negotiations with the Commonwealth to enter into a global plea agreement, which would resolve both of the

1 criminal cases currently pending against him. The Commonwealth, Chen, and Ms. Vali signed a
2 global plea agreement on July 12, 2013. The defense submitted this signed agreement to the Court
3 on July 15, 2013. However, the Commonwealth did not receive a copy of the signed agreement,
4 and the Court never approved it.

5 As a condition of the global plea agreement, Chen was to provide the Commonwealth with a
6 truthful statement, at trial or in a deposition, against his co-defendant, Yu Hua Wang (“Wang). In
7 line with that condition, AAG Brown informed Ms. Vali that the Commonwealth required a signed
8 statement from Chen implicating Wang in Criminal Case Number 11-0304B. According to the
9 Commonwealth, Chen was in breach of that condition because he provided inconsistent statements
10 during three separate interviews.¹ The Commonwealth contends that it orally withdrew consent to
11 the global plea agreement on July 19, 2013 when it orally informed the defense that it was moving
12 forward with a trial in Criminal Case Number 13-0080C. However, the parties continued to work
13 toward a plea agreement, although they disagree as to whether this continued negotiation would
14 result in a global agreement or would apply only to Criminal Case Number 11-0304B.

15 Chen, with his attorney Nadeah I. Vali, and Assistant Attorney Generals Shelli Neal and
16 Chemere McField appeared before this Court for a change of plea hearing on July 22, 2013.
17 Because Criminal Case Number 13-0080C was assigned to Judge Camacho, the parties were
18 ordered to either obtain Judge Camacho’s approval on the deal or have Criminal Case Number 13-
19 0080C transferred to the undersigned, Presiding Judge Naraja. The hearing was then rescheduled to
20 July 26, 2013.

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24 ¹ According to the Commonwealth, they met with Chen on three separate occasions in order to obtain a signed
statement from him against Wang. However, they were unable to do so because his version of events was inconsistent.
Commonwealth’s Memorandum of Points and Authorities Re Contractual Validity of Plea Agreements at 3.

1 The parties continued to work toward a final resolution, again with varying understandings
2 on the part of the Commonwealth and defense. On July 25, 2013, Ms. Vali sent an email to AAGs
3 Brown and McField stating:

4 “...Will you be going forward with the trial with mike [*sic*] White’s case
5 [Criminal Case Number 13-0080C]? [AAG] Shelli [Neal] mentioned edits
6 needed to the global plea regarding the immigration provision. And if we are
7 not doing a global plea anymore and doing a plea on only our case [Criminal
8 Case Number 11-0304B] then we could sign this plea at our meeting at 10.
9 Please bring whichever amended plea is appropriate so we can get it signed
10 and submit it to the court...”

11 On July 25, 2013, AAG Brown again informed Ms. Vali of the Commonwealth’s intent to proceed
12 to trial in Criminal Case Number 13-0080C and produced a plea agreement relating only to
13 Criminal Case Number 11-0304B.

14 The parties appeared in Court on July 26, 2013 for a change of plea hearing. However, the
15 Commonwealth stated that it was withdrawing the plea agreement and that global plea agreement
16 had previously been rescinded. Defendant’s attorneys, on the other hand, stated that they sought
17 specific enforcement of the global plea agreement previously filed with the Court on July 15, 2013.
18 They contend that the global plea agreement is a binding contract against the Commonwealth,
19 thereby prohibiting the Commonwealth from withdrawal. The defense also states that Chen made
20 incriminating statements against his interests in reliance upon that global plea agreement. The
21 Commonwealth argues that (1) a plea agreement may be withdrawn at any time before accepted by
22 the Court, (2) that the global plea agreement was understood as withdrawn by all parties, and (3)
23 that Chen materially breached the contract by failing to provide a truthful statement against co-
24 defendant Wang. The Court continued the hearing to August 1, 2013 in order to give both parties
an opportunity to brief this issue. Both parties provided briefs and affidavits and renewed the above
arguments during the August 1st hearing.

1 **III. LEGAL STANDARD**

2 Plea agreements are construed as unilateral contracts, in which the defendant can accept
3 only through performance. *Camacho*, 2002 MP at ¶ 13. “A plea agreement...is not simply a
4 contract between two parties. It necessarily implicates the integrity of the criminal justice system
5 and requires the courts to exercise judicial authority in considering the plea agreement and in
6 accepting or rejecting the plea.” *United States v. Norris*, 486 F.3d 1045, 1048 (8th Cir. 2001),
7 citing *United States v. McGovern*, 822 F.2d 739, 743 (8th Cir. 1987). Thus, the defendant’s mere
8 acceptance of a plea offer does not create a constitutional right to have that bargain enforced.
9 *United States v. Papaleo*, 853 F.2d 16, 19 (1998). Rather, a plea agreement is nonbinding, and
10 either party may withdraw at any time before a criminal defendant performs by pleading guilty and
11 the plea agreement is approved by the Court. *Camacho*, 2002 MP ¶ 14. See also *Papaleo*, 835 F.2d
12 at 20; *United States v. Savage*, 978 F.2d 1136, 1138 (9th Cir. 1992).

13 **IV. DISCUSSION**

14 In the present case, the Commonwealth orally withdrew its plea offer before Chen tendered
15 his guilty plea in Court and before the Court had accepted the offered plea bargain. The
16 Commonwealth’s withdrawal did not violate any contractual rights, as it occurred before the Chen
17 pled guilty and before Court accepted the plea bargain. *Camacho*, 2002 MP ¶ 15.

18 Unilateral contracts may be upheld even where an offer has been withdrawn where
19 detrimental reliance existed. Courts have opined that this general rule holds true for plea bargains
20 as well. Hence, some courts have determined that detrimental reliance will occur where:

21 a defendant relies upon a prosecutor’s plea offer by taking some substantial
22 step or accepting serious risk of an adverse result following acceptance of the
23 plea offer. Detrimental reliance may be demonstrated where defendant
24 performed some part of the bargain. For example, a defendant who provides
beneficial information to law enforcement can be said to have relied to his
detriment.

1 *California v. Rhoden*, 89 Cal. Rptr. 2d 819 (Cal. Ct. App. 1999). However, there is debate over
2 whether any action short of a guilty plea can constitute detrimental reliance, and our Supreme Court
3 has not made any such determination. *Camacho*, 2002 MP ¶ 18. The defense indicated that negative
4 ramifications exist for Chen because he admitted guilt when he signed the plea agreement and
5 further admitted guilt in his statements to the Commonwealth.

6 This Court takes the position that there is no detriment and therefore no due process
7 violation until after a guilty plea has been accepted by the Court. *Norris*, 486 F.3d at 1948, citing
8 *Mabry v. Johnson*, 467 U.S. 504, 507 (1984). First, neither party can contemplate a benefit from a
9 plea bargain because ultimate approval is left to the trial court. *United States v. Ocanas*, 628 F.2d
10 353, 358 (1980). Therefore, neither party is justified in substantially relying on the deal struck. *Id.*

11 Furthermore, detrimental reliance occurs only where an individual takes substantial steps or
12 accepts serious risk of an adverse result. *Camacho*, 2002 MP ¶ 20. “When a defendant enters into
13 plea negotiations but is unable to reach an agreement with the government, any statements made by
14 the defendant during the course of the plea negotiations are inadmissible against the defendant”.
15 *Id.*; NMI R. Crim. P. 11(e)(6). Thus, Chen’s statements to the Commonwealth are inadmissible at
16 trial, and therefore, detrimental reliance does not exist. Chen is in no worse position than he was
17 before he made his statements to the Commonwealth.

18 The Court reminds the parties that a prosecutor has no duty to enter into plea negotiations or
19 to keep a plea offer open, and a criminal defendant has no constitutional right to a plea bargain.
20 *United States v. Kettering*, 861 F.2d 675, 677 (1988), citing *United States v. Pleasant*, 730 F.2d 657
21 (11th Cir.), *cert. denied*, 469 U.S. 869 (1984); *Camacho*, 2002 MP ¶ 9. However, the Court
22 believes that the Commonwealth is setting a dangerous precedent here and that this case may
23 negatively impact the Office of the Attorney General. Future defendants may think twice before
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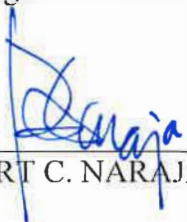
1 entering into such negotiations and agreements for fear that they may be withdrawn at any time,
2 thereby causing their attorneys to waste precious time when they should have instead been
3 preparing for trial. That this agreement would have gone forward at the July 22, 2013 hearing had
4 these two cases not been assigned to different judges only compounds the poor behavior of the
5 Commonwealth in refusing to honor its agreement. That being said, there is no contractually
6 binding effect to plea bargain until it has been accepted by the court. Therefore, this Court has no
7 choice but to allow the Commonwealth's withdrawal of the deal.

8 **V. CONCLUSION**

9 Based on the foregoing, the Court finds that the global plea agreement has been effectively
10 rescinded by the Commonwealth and is not an enforceable contract.

11 Criminal Case Number 13-0080 is reassigned to Judge Camacho.

12 **SO ORDERED** this 1st day of August 2013.

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15 ROBERT C. NARAJA, Presiding Judge
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