

2013 AUG -5 AM 9:10

BY: 
DEPUTY CLERK OF COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

FOR PUBLICATION

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,	)	CRIM. CASE NO. 13-0164
)	
Plaintiff,	)	ORDER GRANTING DEFENDANT'S
	)	MOTION TO DISMISS FINDING
v.	)	PROBATION ILLEGAL WITHOUT
	)	SUSPENDED SENTENCE
JESSE JAMES LISUA,)	
)	
Defendant.)	

THIS MATTER came before the Court on July 31, 2013 at 1:30 p.m. on Defendant's Motion to Dismiss. Defendant Jesse James Lisua was represented by Assistant Public Defender Eden Schwartz. The Commonwealth was represented by Assistant Attorney General James McAllister. Based on a review of the filings, oral argument and applicable law, the Defendant's motion is granted.

I. INTRODUCTION

On January 10, 2013, Defendant Lisua was convicted of one count of criminal contempt in violation of 6 CMC § 3307 and sentenced to the statutory maximum of six months imprisonment. The Court also ordered Defendant to complete one year of probation; attend anger management counseling; refrain from consuming or possessing alcohol or other controlled substances; submit to drug and alcohol testing; complete 100 hours of community service; pay a fine of \$100; and obey all CNMI laws, federal laws, and probation rules. *Commonwealth v. Lisua*, Crim. No. 12-0216C

ASG
RDD

1 (NMI Super. Ct. Jan. 10, 2013) (Judgment and Commitment Order 2-4) (Unpublished) (Attached as
2 Exhibit A).

3 On June 25, 2013, the Commonwealth filed an Information charging Defendant Lisua with
4 one count of criminal contempt, alleging that Defendant Lisua “unlawfully, knowingly, and
5 willfully resisted or refused or failed to obey a lawful court order, to wit: the Judgment and
6 Conviction Order issued by the Superior Court on criminal case no. 12-216C, in violation of 6
7 CMC § 3307 and made punishable by 6 CMC § 3307.” Information at 1.

8 At the preliminary hearing on June 25, 2013, Defendant Lisua moved to dismiss the charge
9 of criminal contempt arguing that the imposition of probation was unlawful, and in the alternative,
10 that contempt of court is not a valid remedy for a probation violation. Defendant Lisua and the
11 Commonwealth filed supplemental briefing on this matter.

12 **II. DISCUSSION**

13 At issue in this case is whether Defendant Lisua unlawfully, knowingly, and willfully
14 interfered with the function of the court by “resist[ing] or refus[ing] or fail[ing] to comply with a
15 lawful order of the court.” 6 CMC § 3307.

16 Defendant Lisua argues that the charge of criminal contempt must be dismissed because the
17 portions of the court order he allegedly violated are not lawful. Defendant was ordered to complete
18 one year of probation, with several conditions listed, even though no part of Defendant Lisua’s
19 sentence was suspended. The Commonwealth argues that it is proper to impose probation even
20 when the defendant was sentenced to the maximum term of probation and has served the entire
21 term.

22 There are only two types of probation in the Commonwealth. 6 CMC §§ 4105, 4113; *see*
23 *CNMI v. Monton*, 2008 MP 14 ¶ 7. Under 6 CMC § 4105, the court imposes a sentence, but
24 suspends its execution, and instead orders probation. *See CNMI v. Monton*, 2008 MP 14 ¶ 7.

1 Under 6 CMC § 4113, the court defers imposition of a sentence and orders probation. *Id.* at ¶ 8. If
2 the defendant complies with all conditions of probation, the defendant’s conviction is then
3 expunged. *Id.*

4 In Defendant Lisua’s earlier criminal case, 12-0216C, neither the execution nor imposition
5 of the sentence was suspended, so this Court’s order of probation was not lawful. The
6 Commonwealth Code describes probation as an alternative sentence, not an additional sentence.
7 *See* 6 CMC § 4105 (“Alternative Sentence: Probation and Suspension of Execution of Sentence”);
8 *and* 6 CMC § 4113 (“Alternative Sentence: Probation and Suspension of Imposition of Sentence”);
9 *see also* *Commonwealth v. Santos*, 4 NMI 348, 351 (1996) (“Probation is imposed where either the
10 imposition or execution of a sentence is suspended . . . and the probationary period itself
11 comprises a portion of the sentence.”).

12 The Commonwealth argues that probation may be ordered in addition to a maximum term of
13 imprisonment. When a sentence is suspended, the length of the probationary period may be longer
14 than the period of time that constitutes the statutory maximum term of imprisonment. *See* 6 CMC
15 §§ 4105(b), 4113(a)(1)-(2). Here, however, the sentence was not suspended. Whether or not the
16 defendant is sentenced to the maximum period of imprisonment has no bearing on whether a
17 portion of the sentence was suspended. The Commonwealth cites 6 CMC § 4113(*l*) as support for
18 the proposition that probation was properly ordered in Defendant’s previous criminal case:
19 “Whenever restitution, payment of a fine or fee, the performance of community work service, or
20 other special condition of probation is ordered, the court shall place the probationer on probation.”
21 Section 4113(*l*) is inapplicable here because no portion of Defendant Lisua’s sentence was
22 suspended, thus there is no “probationer.”

23 The Court holds that the Judgment and Commitment Order issued on January 10, 2013, in
24 criminal case 12-0216C was unlawful to the extent that it ordered Defendant Lisua to be placed on

1 probation and subject to conditions of probation. Today this Court also issued an order in criminal
2 case number 12-0216C correcting the illegal sentence pursuant to Rule 35 of the Commonwealth
3 Rules of Criminal Procedure (attached for ease of reference as Exhibit B).

4 Having determined that the probation ordered in criminal case 12-0216C is unlawful, the
5 Court declines to address the use of criminal contempt to punish a violation of a probation
6 condition.

7 **III. CONCLUSION**

8 For the foregoing reasons, Defendant's motion to dismiss the charge of Criminal Contempt
9 in violation of 6 CMC § 3307 is **GRANTED**.

10 **IT IS SO ORDERED** this 5th day of August, 2013.
11

12
13
14 

15 JOSEPH N. CAMACHO
16 Associate Judge
17
18
19
20
21
22
23
24



20
De

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

COMMONWEALTH OF THE)
NORTHERN MARIANA ISLANDS,)
)
Plaintiff,)
)
v.)
)
)
JESSIE JAMES LISUA)
D.O.B. 11/25/1982)
)
Defendant.)
)

CRIMINAL CASE NO. 12-0216C
DPS CASE NO. 12-009284

JUDGMENT AND COMMITMENT
ORDER

This matter came before the Court on January 9, 2013 at 9:00 a.m. for a Change of Plea as to Defendant **Jessie James Lisua**. The Government was represented by Assistant Attorney General Jacinta Kaipat, and the Defendant appeared with counsel, Assistant Public Defender Benjamin Petersburg.

At the outset of the hearing, the Court was advised through counsel, that the Defendant will enter a plea of "Guilty" to the offense of **Criminal Contempt** as charged in **Count I**, of the Information in Criminal Case No. 12-0216C, in violation of **6 CMC § 3307(a)**.

ACCEPTANCE OF PLEA OF GUILTY

The Court accepted Defendant's plea of Guilty to the offense after finding that (1) the Defendant's decision to plead Guilty is freely, voluntarily, and intelligently made; (2) he has had the advice of competent counsel whom he said he was satisfied with; (3) he understood the

RECEIVED

consequences of his plea of Guilty; and, (4) there is a factual basis for the plea of Guilty. Accordingly,

ADJUDICATION OF GUILT

IT IS HEREBY ADJUDGED AND DECREED that Defendant, **Jessie James Lisua**, is **"Guilty"** to the offenses of **Criminal Contempt**, in violation of **6 CMC §3307(a)**, as charged in **Count I**, of the Information in Criminal Case No. 12-0216C

BACKGROUND

On or about December 3, 2012 , on Saipan, CNMI, the Defendant , Jessie Lisua, showed up to his probation Review Hearing in Criminal Case No. 12-0088A, with a blood alcohol level (B.A.C.) of .206, almost 3 times the legal limit for driving a car. Therefore, Defendant willfully and unlawfully refused to follow the lawful Judgment and Commitment Order issued in Criminal Case No. 12-0088, which forbade him from consuming alcohol during his probationary period.

The Defendant is a repeat offender. Defendant chose to come to court intoxicated and flaunt his disrespect and disregard of the Court's order. His previous conviction required that he abstain from consumption of alcohol. The Defendant openly admits in court that he understood there was a court order prohibiting him from consuming alcohol yet he knowingly violated the court's order. Court orders are NOT suggestions that can be disregarded whenever a defendant feels like it. The knowing disregard of a court order is a sign of disrespect to the court which cannot go unpunished.

To impress upon the Defendant to fully understand that court orders much be followed or there will be consequences, this Court now imposes the full maximum possible sentence of Criminal Contempt.

SENTENCE

After considering the facts of this case, the recommendations of counsel, the Court accepts the terms and conditions of the plea agreement entered into by the parties and hereby sentences the Defendant pursuant to said terms and conditions as follows

1. The Defendant is sentenced to the full maximum of six (6) months imprisonment, to be served day for day, without the possibility of parole, early release, work release, weekend release or any other similar program, with credit for time served of 37 days. This sentence shall start immediately;
2. The Defendant shall be placed on one (1) year of probation, commencing upon Defendants release from Department of Corrections (DOC). This year of probation will be in addition to any other applicable probationary periods. Defendant shall follow all conditions imposed by the Office of Adult Probation.
3. The Defendant shall attend and complete Anger Management Counseling and any other counseling recommended by the treatment provider of the Office of the Adult Probation upon his release from incarceration.
4. The Defendant shall not purchase, possess or consume alcohol or any controlled substances during the period of probation and shall refrain from entering into any bar, tavern, or other establishments whose primary purpose is the sale or consumption of alcohol and shall refrain from associating with persons who are consuming alcoholic beverages or controlled substances, or who are under the influence of alcohol or controlled substances.
5. The Defendant shall submit to an Alcohol & Drug Assessment, and if recommended by the Office of Adult Probation, shall submit to random blood, breath, or urine drug screens at any time;
6. The Defendant shall complete one hundred (100) hours of Community Work Service by the end of his probation, at the rate of no less than (10) hours per month.
7. Defendant will pay a fine of one hundred (\$100.00) dollars by the first month of his probation, Defendant shall pay a twenty five (\$25.00) court fee and the Defendant will pay a probation fee pursuant to Public Law No. 11-82, the amount of which will be assessed by the Office of the Adult Probation. The Defendant shall continue to pay probation fees in accordance with the fee schedule if probation is extended.
8. The Defendant shall obey all CNMI Laws, Federal Laws and Rules of the Adult Probation Office.
9. Failure to comply with any of the foregoing conditions (other than a minor traffic infraction) will constitute a violation of probation and shall subject Defendant to

extension or revocation of probation and/or imposition of all or part of the suspended sentence.

10. The Defendant was further advised that failure to comply with **any** of the above conditions shall constitute a violation of the terms and conditions of the suspended sentence and shall subject the Defendant to revocation proceedings or contempt of court.

IT IS SO ORDERED this 10 day of January 2013



JOSEPH N. CAMACHO, Associate Judge



CLERK OF THE COURT
SUPERIOR COURT

2013 JUN -5 AM 9:10

BY: 
DEPUTY CLERK OF COURT

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

COMMONWEALTH OF THE	)	CRIM. CASE NO. 12-0216
NORTHERN MARIANA ISLANDS,)	
)	
Plaintiff,	)	ORDER CORRECTING ILLEGAL
	)	SENTENCE PURSUANT TO COMM.
v.	)	RULES OF CRIMINAL PROCEDURE
	)	RULE 35(a)
JESSE JAMES LISUA,)	
)	
Defendant.)	

On January 10, 2013, this Court issued a Judgment and Commitment Order accepting Defendant JESSE JAMES LISUA guilty plea to one count of criminal contempt in violation of 6 CMC § 3307 and sentencing him. On June 25, 2013, the Commonwealth filed an Information in criminal case 13-0164 charging Defendant with one count of criminal contempt for violating a condition of probation in this case. Defendant moved to dismiss the charge in criminal case 13-0164 alleging that the conditions of probation in this case were unlawfully imposed on Defendant. *See Commonwealth v. Lisua*, Crim. No. 13-0164 (NMI Super. Ct. Aug. 5, 2013) (Order Granting Defendant’s Motion to Dismiss).

Commonwealth Rules of Criminal Procedure, Rule 35(a) allows the Court to “correct an illegal sentence at any time.” The Commonwealth Code only provides for the imposition of probation when there is a suspended sentence. 6 CMC §§ 4105, 4113; *see also Commonwealth v. Monton*, 2008 MP 14 ¶ 7; *and Commonwealth v. Santos*, 4 NMI 348, 351 (1996). Here, the

1 sentence illegally imposed a period of probation without suspending Defendant's sentence.

2 Accordingly, the Court vacates the illegal portion of the sentence as follows:

3 **IT IS HEREBY ORDERED** that the Judgment and Commitment Order of January 10,
4 2013 is corrected on the Court's own motion by vacating following portions of the section entitled
5 "SENTENCE": Numbered paragraphs 2 through 6, numbered paragraphs 8 through 10, and the
6 portion of numbered paragraph 7 following the word "dollars."

7 The following portions of the section entitled "SENTENCE" remain in force: Paragraph 1,
8 concerning the period of imprisonment; and the first clause of paragraph 7 that states "Defendant
9 will pay a fine of one hundred (\$100.00) dollars."

10 **IT IS SO ORDERED** this 5th day of August, 2013.

11
12
13 
14 **JOSEPH N. CAMACHO**
Associate Judge

15
16
17
18
19
20
21
22
23
24