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1 FOR PUBLICATION

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4 **IN THE SUPERIOR COURT**
5 **FOR THE**
6 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

6 **COMMONWEALTH OF THE**
7 **NORTHERN MARIANA ISLANDS,**

7 Plaintiff,

8 v.

9 **GEORGE MASGA,**

9 Defendant.

CRIMINAL CASE NO. 11-0121

**ORDER CLARIFYING SENTENCE
AND COMMITMENT ORDER**

ENTERED

11
12 **I. INTRODUCTION**

13 THIS MATTER came before the Court on July 10, 2014, at 1:30 p.m. in Courtroom
14 202A on George Masga’s (“Masga”) motion to terminate probationary supervision. The
15 Commonwealth of the Northern Mariana Islands (“Government”) was represented by
16 Assistant Attorney General Jacinta M. Kaipat. Masga was represented by Chief Public
17 Defender Douglas W. Hartig.

18 Based on the filings, oral arguments and applicable law, the Court hereby issues this
19 order clarifying the provisions set forth in Masga’s sentencing.

20 **II. BACKGROUND**

21 On May 2, 2012, pursuant to a change of plea hearing, Masga pleaded guilty to the
22 offense of Illegal Possession of a Controlled Substance (Crystal Methamphetamine), in
23 violation of 6 CMC § 2142(a) as charged in Count II. At the sentencing hearing on July 9,
24

1 2014, Masga was sentenced to a term of six months imprisonment with credit for 22 days
2 served. The Sentence and Commitment Order (“SCO”) outlined Masga’s sentence as
3 follows: (1) the payment of a court assessment fee of \$100.00, payable within 30 days of
4 release; (2) a fine of \$2,000.00, payable within five months; (3) agreement to cooperate fully
5 with law enforcement in other drug investigations and to testify at trials against co-
6 defendants; and (4) to be referred to the Community Guidance Services (“CGS”) and
7 successfully complete any recommended course of treatment, including Alcohol and Drug
8 Treatment while incarcerated, if possible. (Sentence and Commitment Order).

9 On July 9, 2014, Masga filed the instant motion arguing that probationary
10 supervision should be terminated for the following reasons: (1) the court cannot use the
11 Office of Adult Probation (“OAP”) to monitor fine payments made by Masga and (2) the
12 court cannot refer and require that Masga undergo drug treatment at CSG as part of his
13 sentencing.

14 **III. DISCUSSION**

15 As described above, Masga offers two arguments for terminating probationary
16 supervision. The Court has considered each argument and finds that the Court can use the
17 OAP to track fine payments made by Masga and the OAP’s interpretation of the SCO is
18 misguided because the Court sentenced Masga to undergo drug treatment while incarcerated
19 if a program was then available. The SCO did not sentence Masga to drug treatment after
20 his jail term has already been served and the SCO should not be interpreted as to include that
21 requirement.

1 **A. OAP’S MONITORING OF PAYMENTS**

2 First, Masga asserts that keeping track of the fine payments ordered in the SCO should
3 be done in the same way as is done in collection cases. This would require the Court to
4 issue an order requiring payments and then check the accounting of Masga’s payments with
5 the clerk of court. Masga argues that the Court does not have the authority to order him to
6 report to a probation officer to ensure payment of the fine because this would essentially
7 place him under probation.

8 Title 6 CMC § 2142(a) provides for the offense of possession of a controlled
9 substance. Subsection 2142(b) provides sentencing guidelines for the mandatory minimum
10 penalty, as follows, “[a]ny person who violates subsection (a) of this section with respect to
11 any controlled substance except marijuana shall be sentenced to a term of imprisonment of
12 not more than five years not subject to suspension, parole or probation, and a fine of
13 \$2,000.” Pursuant to 6 CMC § 4107 “[w]here an offense is made punishable by fine, the
14 court imposing the fine may give such directions that appear to be just with respect to the
15 payment of the fine.”

16 Masga is correct in his assertion that the Court cannot impose probationary
17 supervision pursuant to 6 CMC § 2142(b); however, the Court may utilize the OAP in
18 tracking Masga’s fine payments made in accordance with the SCO under 6 CMC § 4107.
19 The OAP is much better equipped to track Masga’s payments than the Court’s own financial
20 offices. Further, the OAP is part of the CNMI Superior Court and is better staffed to handle
21 such tracking of payments. However, the OAP would not have the power to enforce the
22 fine. Rather, the OAP must alert the court and the Attorney General’s Office (“AGO”) of
23 nonpayment and then the AGO can initiate contempt proceedings if necessary. The OAP
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1 tracking fine payments made by Masga is not a probationary condition requiring
2 probationary supervision, but rather, OAP is being utilized as a clerical resource of this
3 Court (emphasis added).

4 Thus, the Court possesses the authority to order payment of a fine and the tracking of
5 such payment be made by the OAP. As of the hearing date on July 10, 2014, Masga has
6 only paid \$395.00 of his \$2,000.00 fine leaving a balance of \$1,605.00. Therefore, Masga is
7 ordered to pay the remainder of his fine within five months of this Order at a rate of no less
8 than \$325.00 per month for the next five months, or until the fine is earlier paid in full. The
9 OAP will inform the Court and the parties of any nonpayment.

10 **B. IMPOSITION OF DRUG TREATMENT PROGRAM**

11 The second argument asserted by Masga, and supported by the Government, is that
12 the Court lacks the authority to refer Masga to CSG and require successful completion of a
13 drug treatment plan pursuant to the July 9, 2012, SCO. Masga's sentence was imposed two
14 years prior to this motion and Masga now argues that referring him to CGS for treatment
15 constitutes a probationary condition outside the Court's authority.

16 The Court does not reach Masga's second argument because the issue is not before
17 the Court at this time. The SCO specifically states that Masga "be referred to the
18 Community Guidance Services ("CGS") and successfully complete any recommended
19 course of treatment, including Alcohol and Drug Treatment while incarcerated, if possible.
20 (Sentence and Commitment Order)." The language of this provision provides that Masga
21 was to undergo drug treatment while he was actually incarcerated if the program was
22 available through the Department of Corrections. For reasons unknown to this Court Masga
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1 did not receive this treatment, but pursuant to the SCO cannot now be forced to undergo
2 such treatment because post-incarceration treatment was not provided for in the SCO.

3 Thus, the OAP should not interpret the SCO as requiring Masga to undergo drug
4 treatment after his jail term has been served because the Court's sentencing did not provide
5 for such a provision.

6 **IV. CONCLUSION**

7 Therefore, Masga is not required to undergo drug treatment after already serving his
8 jail term. Further, Masga shall pay off his fine within five months of this order at a rate of
9 no less than \$325.00 per month over the next five months, or until the fine is earlier paid in
10 full. The tracking of such payments shall be made by OAP and failure to make a monthly
11 payment may result in Masga being called before the Court to show cause why he should
12 not be held in contempt for failure to follow this Order.

13 **IT IS SO ORDERED** this 28th day of October, 2014.

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16 **ROBERTO C. NARAÑA**, Presiding Judge
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