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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** ) **CRIMINAL CASE NO. 84-0060**  
7 **NORTHERN MARIANA ISLANDS,** )  
8 **Plaintiff,** ) **ORDER DENYING DEFENDANT'S**  
9 **v.** ) **APPLICATION TO VACATE**  
10 **CARLOS K. SABLAN** ) **JUDGMENT OF CONVICTION**  
11 **Defendant.** )

12 **INTRODUCTION**

13 This matter was initiated with the Court upon the request of the Clerk of Court in  
14 response to Carlos K. Sablan's ("Sablan") telephonic inquiry regarding his application to  
15 vacate conviction. Based upon a review of the facts and applicable law, the Court hereby  
16 DENIES Sablan's application for the following reasons.

17 **PROCEDURAL HISTORY**

18 On October 10, 1984, a jury found Sablan guilty of Burglary and Theft of items with  
19 values in excess of \$250.00(J. 1, Nov. 7, 1984). Sablan was sentenced on November 7,  
20 1984. In sentencing Sablan, the court explained that Sablan was being sentenced under 6  
21 CMC § 4113 because the ends of justice and the best interests of the public would be better  
22 served by applying this section.<sup>1</sup> (J. 2). Pursuant to the suspended imposition of sentence,

23  
24 <sup>1</sup> 6 CMC § 4113 was the controlling probation statute at the time of Sablan's conviction and was enacted pursuant to Public Law 3-71 in 1983. This section has since been amended multiple times over the past thirty

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1 Sablan was (1) to be placed on probation for three years, (2) ordered to pay \$615.00 in  
2 restitution, (3) reimburse the court for attorney's fees not to exceed \$385.00, and (4) perform  
3 50 hours of community service. (J. 2). Sablan was also advised by the court that upon his  
4 successful completion of his probation *without the imposition of sentence*, the court would  
5 vacate the Judgment of Conviction and he would not be deemed to have been convicted of  
6 the crimes for any purpose. (J. 3).

7 Subsequently, the Commonwealth filed a motion to revoke probation alleging that  
8 Sablan willfully violated the conditions of his probation by failing to make any payments of  
9 restitution even though he was able to do so. (Order Revoking Probation 1 Mar. 10, 1985).  
10 Further, the Commonwealth asserted that while on probation Sablan was convicted of  
11 driving under the influence of alcohol. (Order Revoking Probation 1 Mar. 10, 1985). On  
12 March 10, 1986, Sablan's probation was revoked and a re-sentencing date was set for March  
13 18, 1986.

14 At Sablan's March 18, 1986, sentencing he was re-sentenced to "one year  
15 imprisonment for the crime of burglary and six months imprisonment for the crime of theft,"  
16 both "to run consecutively and commence immediately." (Sentence 1-2, March 18, 1986).  
17 The eighteen month jail term was suspended and for the second time Sablan was placed  
18 under probation under the supervision of the Court Probation Officer for the same period of  
19 18 months subject to the following conditions: (1) payment of the November 7, 1984  
20 restitution balance at \$50.00 monthly increments until paid off; (2) no drinking alcohol  
21 during the eighteen month period; (3) no participation in cockfighting; (4) Sablan was not to  
22 enter any bars, night-clubs, or place of drinking; and (5) to comply with all laws of the

23 years by Public Laws 11-82 (1999), 14-9 (2004), 15-46 (2007), and 16-42 (2009). The most significant change  
24 occurring in 2007 when the entire section was repealed and re-enacted under PL 15-46. To avoid confusion,  
the Court will refer to the statute under which Sablan was first sentenced as the 1983 Version.

1 CNMI. Sablan was further subject to all general condition of probation and to continue his  
2 education and report regularly to the Probation Officer under his or her direction. (Sentence  
3 2). The court did not provide for any portion of the sentence to be subject to the provisions  
4 of the 1983 Version.

5 Under the March 18, 1986, re-sentencing order, Sablan's probation expired on  
6 September 18, 1987. As of September 8, 2008, Sablan has failed to comply with the terms  
7 of his original probation in that Sablan has failed to reimburse the court for attorney's fees.

### 8 **DISCUSSION**

9 Sablan's application to vacate his 1984 conviction raises two issues for the Court  
10 including: (1) which version of the probationary statute to apply, and (2) whether Sablan has  
11 properly complied with the statutory requirements for his judgment to be vacated. The  
12 Court has considered each issue below and has found that the probationary statute in effect  
13 at the time of Sablan's conviction must be applied; however, Sablan has not complied with  
14 the statutory requirements and thus does not qualify for his judgment to be vacated.

#### 15 **A. APPLICATION OF 1983 VERSION OF 6 CMC § 4113**

16 The first issue raised by Sablan's application is which version of section 4113 is  
17 applicable to the present situation.<sup>2</sup> As was discussed above, section 4113 has undergone  
18 significant changes in the thirty years since Sablan's first conviction and understandably  
19 these changes affect the application of the statute. One such change is the procedure under  
20 which a judgment is vacated. Due to this modification, the procedure Sablan would be  
21 subjected to under the current 2009 Version would be harsher than the 1983 Version and  
22 thus, the 1983 Version must be applied.

23  
24 <sup>2</sup> The most recent amendment to section 4113 occurred in 2009. To avoid continued confusion, this recent amendment will be referred to as the 2009 Version.

1 Both the CNMI Constitution and the United States Constitution prohibit ex post  
2 facto laws. NMI Const. art. I, § 1; U.S. Const. art I, §§ 9 and 10. The United States Supreme  
3 Court has held a “law that changes the punishment, and inflicts a greater punishment, than  
4 the law annexed to the crime, when committed” is unconstitutional as an application of an  
5 ex post facto law. *Calder v. Bull*, 3 U.S. 386 (1798).

6 The 2009 Version includes a procedure for vacating a judgment of conviction that  
7 the 1983 Version does not. This major additional step requires that a probation officer file a  
8 motion to set aside conviction upon discharge from probation. 6 CMC § 4113(k). The 1983  
9 Version does not include this requirement, but rather, a probationer was only required to  
10 reach the date of discharge from probation without the sentence being imposed and  
11 thereafter the judgment of conviction was automatically vacated. Additionally, the 2009  
12 Version allows the prosecutor the opportunity to object to the setting aside and vacating of  
13 the conviction which was not present in the earlier statute. Moreover, the 2009 Version also  
14 places restrictions on the offenses that are eligible for suspended imposition of sentencing  
15 and places specific time limits on the duration of probation.<sup>3</sup>

16 These amendments to the 2009 Version are additional requirements that were not a  
17 part of Sablan’s original punishment. As such, these additions increase Sablan’s punishment  
18 in that he would be required to complete additional steps to vacate his judgment. For this  
19 reason, application of the 2009 Version to the instant case would qualify as an ex post facto  
20 law and thus, the 1983 Version must be applied.

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24 <sup>3</sup> The 2009 law was enacted to allow for more supervision of convicted persons in the hope that it would advance rehabilitation.

1           **B. PROBATION STATUTES**

2           The imposition of probation is governed by both 6 CMC § 4113 and 6 CMC § 4105.  
3           *See Commonwealth v. Lisua*, Crim. No. 13-0164 (NMI Super. Ct. August 5, 2013) (Order  
4           Granting Def.’s Mot. To Dismiss Finding Probation Illegal Without Suspended  
5           Sentence)(citing *Commonwealth v. Monton*, 2008 MP 14 ¶ 7). In enacting section 4113, the  
6           legislature has provided a form of deferred imposition of sentence in which the defendant is  
7           placed on probation for a fixed period of time based on certain conditions. *See*  
8           *Commonwealth v. Sablan*, 1996 MP 22, 3. Upon the defendant’s compliance with all the  
9           conditions, the conviction is then expunged. *Id.*<sup>4</sup>

10           This is an extraordinary statute in that it gives those convicted of a crime a second  
11           chance by allowing a defendant who complies with all conditions of the suspended sentence  
12           to later expunge the conviction. *See id.* This provides the defendant the opportunity to make  
13           it as if they had not been convicted of the crime for any purpose. 6 CMC § 4113(k).  
14           However, “where a sentence is imposed, 6 CMC § 4113 is not implicated, but rather, must  
15           be unambiguously specified by the Superior Court.” *Id.*<sup>5</sup>

16           Conversely, pursuant to a section 4105 disposition, the court imposes a sentence but  
17           suspends the execution of the sentence, provided the defendant fully complies with all terms  
18           and conditions. *Monton*, 2008 MP 14 ¶ 7. “Following the probationary period, the  
19           conviction remains on the defendant’s record.” *Id.* Further, in the absence of a clear  
20           indication agreed to by the parties or prescribed by the trial judge that section 4113 is to  
21           apply, section 4105 must apply. *Id.* ¶ 9.

22           <sup>4</sup> Although the NMI Supreme Court used the term “expunged” in its 1996 decision, P.L. 3-71 contains no such  
23           language, nor do the other amendments. The term used in all of the § 4113 versions was to “set aside  
24           conviction.” The term ‘expunge’ has a significant legal consequence that differs from setting aside and  
                vacating a judgment.

<sup>5</sup> The NMI Supreme Court has made clear that 6 CMC § 4113 is used as “an exception to normal sentencing  
                procedures.” *Monton*, 2008 MP 14 ¶ 9.

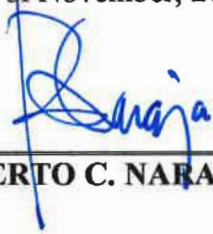
1 In order for a probationer's conviction to be vacated and set aside under the 1983  
2 Version, the defendant must be discharged from his probation without the imposition of  
3 sentence. 6 CMC § 4113. Once a defendant's probation is revoked and he is sentenced, he  
4 is no longer eligible to have his Judgment of Conviction vacated. *See Commonwealth v.*  
5 *Mitchell*, 1997 MP 4, ¶¶ 17-18. Here, although Sablan was first sentenced pursuant to  
6 section 4113, he failed to abide by all of the probationary conditions by not paying  
7 restitution. This failure led to his re-sentencing on March 18, 1986, which imposed a  
8 sentence as outlined above. Therefore, a sentence was imposed and thus, section 4113 does  
9 not apply. Further, Sablan's sentencing on March 18, 1986, failed to either renew or  
10 reference the application of section 4113 and in the absence of such Sablan does not now get  
11 the benefit of vacating his judgment pursuant to this section.

12 Additionally, Sablan's probationary period under the March 18, 1986, sentencing  
13 order may have naturally expired, but as of the date of his inquiry with the Clerk of Court he  
14 has never fully complied with the conditions in that he has failed to reimburse the court for  
15 attorney's fees.

16 **CONCLUSION**

17 For the foregoing reasons, Sablan's application to vacate conviction is DENIED due  
18 to the fact that he has failed to satisfy the statutory requirements.

19 **IT IS SO ORDERED** this 10th day of November, 2014.

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22 **ROBERTO C. NARAJA**, Presiding Judge  
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