

1 **FOR PUBLICATION**

2
3 **IN THE SUPERIOR COURT**
4 **OF THE**
5 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

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

8 **Plaintiff,**)

9 **v.**)

10 **FRANCISCO Q. GUERRERO,**)

11 **Defendant.**)

CRIMINAL CASE NO. 12-0111D

ORDER DENYING GUERRERO'S
MOTION FOR REDUCTION OF
SENTENCE

12 **I. INTRODUCTION**

13 THIS MATTER came before the Court on April 29, 2015, at 1:30 p.m. in Courtroom 223A.
14 Assistant Attorney General Clayton J. Graef appeared for the Government. Attorney Brien Sers Nicholas
15 appeared for the Defendant, Francisco Q. Guerrero.

16 Based on review of the filings, oral arguments, and applicable law, the Court hereby **DENIES**
17 Defendant's motion for reduction of sentence.

18 **II. BACKGROUND**

19 On July 10, 2013, the Court found Defendant guilty on eleven counts: three counts of assault battery,
20 five counts of disturbing the peace, one count of forth degree sexual abuse of a minor, and two counts of
21 second degree indecent exposure. The Court sentenced Defendant to six years of imprisonment. The
22 maximum sentence that could be imposed was seven years and six months.

23 Following the conviction, Defendant filed an appeal to the Commonwealth Supreme Court. On
24 November 18, 2014, the Supreme Court upheld Defendant's conviction. *Commonwealth v. Guerrero*, 2014
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1 MP 15 ¶ 28. The Supreme Court issued a mandate in this case on December 10, 2014.

2 On April 8, 2015, Defendant filed a motion for reduction of sentence under Rule 35(b) of the
3 Commonwealth Rules of Civil Procedure.¹ Said motion was timely filed.

4 III. LEGAL STANDARD

5 Rule 35(b) provides that a Court may reduce a defendant's sentence if he or she files a motion for
6 reduction within 120 days after an appellate court issues a mandate. Compare NMI R. Crim. P. 35(b) with
7 6 CMC § 4114 (limiting the time bar for a reduction of a sentence to within 60 days of the appellate court's
8 issuance of a mandate). Because the Commonwealth's Rule 35(b) is based on Rule 35(b) of the Federal
9 Rules of Criminal Procedure, the Court relies on cases interpreting Rule 35(b) of the Federal Rules of
10 Criminal Procedure prior to its amendment in 1987. *Commonwealth v. Ramangmou*, 5 NMI 19, 20 n.2
11 (1996) (per curiam).

12 To meet his or her burden under Rule 35(b), a defendant must show illegality or a gross abuse of
13 discretion. *Id.* n.4 (relying on decisions from the Fifth Circuit); *United States v. Lewis*, 743 F.2d 1127, 1129
14 (5th Cir. 1984) (holding that the defendant has the burden to show that his or her sentence was founded upon
15 "tainted" record).

16 IV. DISCUSSION

17 Defendant argues that the Court should reduce his sentence on the basis of Defendant's reputation
18 prior to his conviction and for medical reasons. The Court is not persuaded by Defendant's arguments.
19 Defendant's three-page memorandum of points and authorities do not allege any illegality or gross abuse
20 of discretion under *Ramangmou*. Therefore, Defendant has not met his burden of showing the *prima*
21 *facie* elements for relief under Rule 35(b).

22 Furthermore, the Court notes that the maximum sentence that this Court could have imposed was

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24 ¹ In his notice of motion, Defendant claims that his motion is also brought pursuant to claims under Article I,
25 Sections 4(e) and 5 of the Commonwealth Constitution. Defendant also claims that his motion is brought pursuant to claims
under the Sixth and Fourteenth Amendment of the United States Constitution. Defendant does not articulate his support for
invoking said claims, and the Court declines to address for that reason.

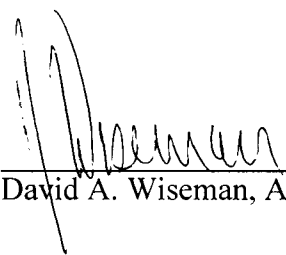
1 seven and a half years. This Court found good cause to reduce said sentence based on some mitigating
2 circumstances, such as Defendant's former status in the community. The Court ultimately sentenced the
3 Defendant to six years, the same sentence recommended by the presentence investigation report. In
4 sentencing Defendant, the Court considered his sexual abuse against the victim, the trauma inflicted upon
5 her, the relationship between Defendant and the victim who is his biological granddaughter, the severity of
6 the offense, Defendant's lack of remorse, his character, and other factors. The Court finds here, as it found
7 then, that Defendant's sentence was appropriate in light of said considerations.

8 To the extent that Defendant argues that the Court should reduce his sentence on the basis of his
9 medical condition, the Court notes that illness is a part of life. Defendant failed to make his case that the
10 Court should grant him relief on the basis of compassion.

11 **CONCLUSION**

12 Based on the foregoing, the Court **DENIES** Defendant's motion for reduction of sentence.

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14 **SO ORDERED** this 4 day of May , 2015.

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18 David A. Wiseman, Associate Judge
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