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**FOR PUBLICATION**

CLERK OF COURT  
SUPERIOR COURT  
2015 JUN 26 PM 12: 43  
BY:   
DEPUTY CLERK OF COURT

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

COMMONWEALTH OF THE NORTHERN)  
MARIANA ISLANDS, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
BENIGNO R. FITIAL, )  
D.O.B. 11/27/1945 )  
 )  
Defendant. )

**CRIMINAL CASE NO. 14-0051**  
  
**SENTENCE AND COMMITMENT  
ORDER**

This matter came before the Court for Sentencing on June 24, 2015 at 1:30 p.m. in Courtroom 223A. The Government was represented by Special Prosecutor George Hasselback. The Office of the Attorney General, Chief Prosecutor Leonardo Rapadas also appeared. The Defendant appeared with his Counsel, Stephen Nutting, Esq.

On May 13, 2015, the Defendant pled **Guilty** of the offenses of **Misconduct in Public Office**, as charged in **Count IV** of the First Amended Information, in violation of **1 CMC §7847**, and **Conspiracy to Commit Theft of Services**, as charged in **Count VII** of the First Amended Information, in violation of **6 CMC § 1607(b)**.

**SENTENCE**

The sentencing of an individual convicted of a crime is perhaps one of the most important functions in the criminal justice system. It is my responsibility to perform such task. The heavy burden on the Court is a reflection of the importance of the sentence to the public interest.

In doing so, I must consider the protection of the public, the rights of victims and the gravity of the crime, and its consequences. The Court must also consider the background and record of the

1 Defendant and give serious consideration to the goals of sentencing and assure the ends of justice.

2 The crime of Conspiracy to Commit Theft of Services carries a maximum jail term of five  
3 (5) years imprisonment and or a fine of up to five thousand (\$5,000.00) dollars.

4 The crime of Misconduct in Public Office carries a maximum sentence of one (1) year  
5 imprisonment and or a fine of up to one thousand (\$1,000.00) dollars.

6 The Special Prosecutor has submitted a detailed sentencing memorandum concluding with  
7 a recommendation of a five (5) year sentence all suspended, except two (2) years to be served  
8 without parole. The Government's submission of a sentencing memorandum recommends a 1 year  
9 sentence for the Misconduct in Public Office conviction to run consecutive to the felony sentence  
10 recommended by the Special Prosecutor. The total recommended time to serve from them would  
11 be three (3) years.

12 The Defendant has also submitted a detailed sentencing memorandum and proposed that any  
13 sentence of incarceration be suspended in its entirety.

14 The Court has reviewed the written briefs of the parties regarding the sentence they believe  
15 the Defendant should receive and the reasons supporting their positions. The Court welcomes the  
16 briefs and finds them helpful for this hearing.

17 In sentencing a Defendant in a criminal case, absent any statutory guidelines the Court must  
18 consider any aggravating and mitigating factors.

19 Addressing the mitigating factors presented by Defendant, through, its sentencing memo, the  
20 arguments, letters of support received and statements made in Court today and the record in this case  
21 the Court lists and considers the factors listed below.

22 Defendant in this case, is a 69 year old man with no prior criminal history.

23 The Court notes Defendant's acceptance of responsibility for his actions by pleading guilty  
24 to the charges and by making sincere and profound remorseful statement to the Court.

25 The Court notes the Defendant's many decades of public service and achievements, many  
26 of which were in the public interest.

- 27 • Defendant's character and attitude suggest he is not likely to reoffend and the present legal  
28 posture of his conviction would not legally allow him to be in such a position again to have  
such an opportunity

1 • Defendant is likely to comply with any imposed supervised release conditions

2  
3 Defendants' illustrious public life and works are in his favor, though diminished, of course,  
4 by what this case discloses. This is a first, probably a last, conviction. Defendant is 69 years old and  
5 in imperfect health. However, there are many others of advanced years who suffer from some  
6 medical ailment who go to prison including governors of various states

7 The Court will now turn to the aggravating factors. In doing so, the Court notes the record  
8 of this case to include the following:

9 In may of last year, the Defendant was charged with thirteen (13) counts of criminal  
10 misconduct. Those included charges stemming from

- 11 • a temporary release of a prisoner from the department of corrections;
- 12 • charges stemming from an award of a contract to the former head of Finance, Michael Ada;
- 13 • charges stemming from the execution of a contract related to CUC; and
- 14 • charges stemming from an armed escort that was provided to former Attorney General Edward Buckingham.

15 On May 13th of this year, this Court found that Defendant was guilty as to one count of  
16 misconduct in public office and one count of conspiracy to commit theft of services.

17 As to the Defendant's crime of Misconduct in Public Office, the Defendant's acts  
18 demonstrated a flagrant display of abuse of authority. On the eve of his inauguration the Defendant  
19 ordered the release of his personal masseuse, a federal prisoner at the time, from a detention facility,  
20 DOC, late at night and had her transported to his residence for a personal massage. The Court notes  
21 that Defendant claims he was in agonizing pain which was witnessed by his attorney general at that  
22 time, not Attorney General Buckingham and that the prisoner masseuse was the one he used for some  
23 time to get relief from his pain.

24 As to the Defendant's crime of conspiracy to commit theft of services, the Defendant's acts  
25 demonstrated blatant arrogance, unbecoming of the highest office of government. The Defendant  
26 treated the time, money, and resources of the CNMI's law-enforcement agencies as his own private  
27 property and dispatched the good men and women who serve our community away from their duties  
28 to protect the public with the express purpose of breaking the law.

///

1           On August 13, 2012, when the CNMI Office of the Public Auditor filed criminal charges  
2 against the former CNMI Attorney General Edward T. Buckingham – the Defendant orchestrated  
3 a coordinated effort to actively interfere with the ongoing criminal process. In the course of eighty-  
4 five (85) phone calls and messages between the Defendant, the police authorities, and other members  
5 of the conspiracy, the Defendant was like a screenwriter, producer and director of a movie with an  
6 elaborate plot to employ armed police officers to escort the former attorney general to the airport at  
7 the very crack of dawn in order to avoid service of a penal summons. The Defendant even instructed  
8 his personal body guard by cell phone to shield the former attorney general from FBI Agents who  
9 were merely exercising their official duty to serve a penal summons. Unfortunately this was not a  
10 movie, but real life.

11           The Defendant argues that the only personal benefit he received from all these events was  
12 the massage therapy he received from the prisoner he summoned from federal detention at DOC.

13           However, I think the position that ought to be appropriate, in this matter is not how you  
14 measure what happened here in the value of money, property or other personal benefit, but rather the  
15 harm to the erosion of public trust in government.

16           The Defendant and supporters, in their urging for leniency state that he has already been  
17 severely punished for his actions. That the Defendant suffered humiliation in his fall from holding  
18 the high government offices of the CNMI. Much of the Defendant’s sentencing memorandum is  
19 marked by the great accomplishments in the Defendant’s life prior to and while in public office and  
20 the Court acknowledges these accomplishments and takes judicial notice of many more that are not  
21 even listed. However, the Court must treat the matter as not that significant for sentencing purposes  
22 “because justice is blind. It is not possible for the Court to treat loss of public esteem as leniency for  
23 the Defendant – a quality not afforded to other Defendants who never got to bask in the government  
24 high offices. The Court must ensure substance to the very notion of equal justice.”

25           The Defendant seeks consideration for his ailing health spurred on in part by the tragedy of  
26 Type II Diabetes. The Court is very much aware of the fact that the Defendant is no longer young  
27 and has a very serious medical condition. The Court takes this into account in sentencing, but can  
28 not allow the matter of the Defendant’s health to depreciate the seriousness of his offenses. The



1 public's perception of sentencing is a crucial factor in its overall perception of the justice system.

2 The Court welcomes the many letters of support for Defendant, from people, many of whom,  
3 this Court has known, admired and respected for several decades and who have known Defendant  
4 for a very long time. I have found them thoughtful and caring in the description of the  
5 characteristics of Defendant as a public servant, good family man and community goal driven person.

6 The supporters gratitude expressed in their statements and letters for the good things the  
7 Defendant has done is reasonable and appropriate, but the requests for exceptional leniency and no  
8 jail time are based on the idea that someone who does good things cannot also do bad things or that  
9 the good directly offsets the bad.

10 In Court, we see case after case where good fathers and family men are also bad citizens and  
11 wind up in jail. There is no question that the innocent children of felons suffer, and I am sympathetic  
12 to the plight the Defendant's family have endured over the last several years and up through today  
13 and beyond.

14 Very few criminals are all bad. Many are decent spouses, parents, family members, good  
15 friends, sometimes good employees or employers. But in a criminal Court, the judgments are made  
16 upon the criminal acts, usually the worst things that the accused has done. Good works do not offset  
17 criminal misconduct, though they may mitigate it. If this were not so, there would be a great moral  
18 hazard, a criminal might decide that if he does enough good deeds, he will get a pass on his criminal  
19 conduct.

20 Based on the original 13 charges filed against you, they represented that perhaps you were  
21 responsible for a culture of ethical failure in your office.

22 The very definition of corruption is an official's use of its office to procure some benefit  
23 either personally or for someone else, contrary to the rights of others.

24 This Court believes that a great harm to any society or community is corruption in any form  
25 and especially in the form of a breach of the public trust that is vested in an employee or as in this  
26 case a high ranking official, the chief executive of the government, to wit the Governor. Corruption  
27 undermines faith in public institutions, and takes away valuable resources aimed at improving the  
28 quality of life of citizens.

1           Such conduct cannot, should not and will not be tolerated and the proverbial message must  
2 be sent that government officials who betray the public trust by violating the laws of the CNMI will  
3 in all likelihood go to jail.

4           The crimes committed here were grave. It calls for a sanction of corresponding significance.  
5 This is because the Court is entrusted with an obligation to deter others from committing the same  
6 crimes.

7           At the same time, the Court weighs the need to order a serious sanction with the existence  
8 of other circumstances specific to the individual. This is the Defendant's first offense. He has taken  
9 responsibility for his actions, it is highly unlikely he will violate CNMI law again. He is no longer  
10 young and he is seriously ill. There are convincing limitations here of a physical nature that stand  
11 in the way of a maximum or lengthy sentence, which but for such limitations would be given by this  
12 Court.

13           This Court is aware of the historical impact of the sentencing of a former governor.  
14 Whatever this Court decides must be meaningful in light of the significance of this fact.

15           Consigning someone to prison, in particular this Defendant, who the Court has known for  
16 almost 4 decades in many personal, professional and social capacities; or any other Defendant, "is  
17 a very difficult and sad necessity." "there are impulses of avoidance from time to time - - toward a  
18 personally gratifying leniency or toward an opposite extreme. But there is, obviously, no place for  
19 private impulse in the judgment of the Court. The course of justice must be sought with such  
20 objective rationality as we can muster, tempered with mercy, but obedient to the law."

21           The judicial canons require that judges perform their duties without being "swayed by  
22 partisan interests, public clamor, or fear of criticism." While sometimes a most difficult task, the  
23 Court must impose the sentence in even the most controversial of cases without fear of the public  
24 criticism that the sentence may produce.

25           In view of the foregoing observations, the Court believes that this is a case where the best  
26 interests of justice and of this society will be best served by imposing a jail term that the Court  
27 believes will have a deterrent effect on government officials and employees, present and future, and  
28 along with the other terms of sentence will provide the necessary just punishment that society

1 demands. In addition, the sentence will not depreciate or lessen the seriousness of the offenses, and  
2 must promote respect for the law.

3 The Court will now impose sentence in this case. It is the judgment of the Court that the  
4 sentence of Benigno R. Fitial shall be as follows:

- 5 1. On **Count VII** for the crime of **Conspiracy to Commit Theft of Services**, the  
6 Defendant is hereby sentenced to the maximum term of 5 years in jail, however, in  
7 view of the several and significant mitigating circumstances mentioned above, and  
8 for those reasons only, the Court suspends all except one (1) year, and the maximum  
9 fine of \$5,000.00;
- 10 2. On **Count IV** for the crime of **Misconduct in Public Office**, the Defendant is hereby  
11 sentenced to one (1) year imprisonment all suspended except for thirty (30) days to  
12 run concurrent with the sentence above, and the maximum fine of \$1,000.00. The  
13 Defendant shall report to the Department of Corrections on or before July 6, 2015  
14 and shall be released on July 6, 2016; and
- 15 3. The Defendant shall be placed on probation upon his release from the Department  
16 of Corrections under supervision of the CNMI Office of Adult Probation for a  
17 period of one(1) year and comply with any directive imposed by his Probation  
18 Officer relevant to his supervision, and shall report to them within twenty (20)  
19 days of his release.
- 20 4. The Defendant shall pay a fine in the total amount of **six thousand (\$6,000.00)**  
21 **dollars** as indicated above;
- 22 5. The Defendant will pay an assessment fee of **one hundred (\$100.00) dollars** as  
23 required by P.L. No. 11-105;
- 24 6. The Defendant shall pay restitution which shall be determined at a later time;
- 25 7. The Defendant shall pay probation fee pursuant to Public Law No. 11-82 in the  
26 amount to be assessed by the Office of Adult Probation. The Defendant shall  
27 continue to pay probation fees in accordance with the fee schedule if probation is  
28 extended; and

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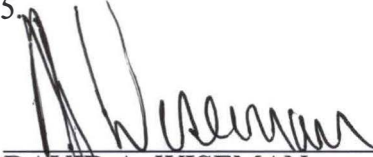
8. The Defendant must obey all CNMI and Federal laws as well as the rules of the Office of Adult Probation. Minor traffic citations shall not constitute a violation of this condition.

The Court believes this sentence meets the needs of justice in view of the mitigating factors recited above.

In view of the Defendant's need to continue physical treatment therapy, the Court requests and recommends to the Commissioner of Department of Corrections to allow Defendant to continue to have his physical therapist provide him the therapy he needs and in her absence to allow him to have the physical massages he needs as an interim or supplemental therapy.

The Court further requests and recommends that the Commissioner make reasonable efforts to accommodate such treatments.

SO ORDERED this 26 day of June, 2015.

  
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DAVID A. WISEMAN  
Associate Judge