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7 IN THE SUPERIOR COURT
OF THE
8 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

9 COMMONWEALTH OF THE)
10 NORTHERN MARIANA ISLANDS,)

11 Plaintiff,)

12 v.)

13 MICHAEL T. CASTRO,)
14 D.O.B. 07/30/1976)

15 Defendant.)

CRIMINAL CASE NO. 14-0078
DPS CASE NO. 14-005713

ORDER GRANTING THE
GOVERNMENT'S MOTIONS; AND

ORDER DENYING CASTRO'S CORAM
NOBIS REMEDY UNDER RULE 32(D) OF
THE RULES OF CRIMINAL
PROCEDURE

16 I. INTRODUCTION

17 THESE MATTERS came before the Court on December 2, 2015, at 1:30 p.m. in Courtroom 223A.
18 Plaintiff, the Commonwealth of the Northern Mariana Islands, was represented by Assistant Attorney
19 General Heather P. Barcinas. Defendant, Michael T. Castro, was represented by Attorney Pamela Brown.

20 At the hearing, the Court heard arguments on (1) the Government's Motion to Withdraw Non-
21 Objection; (2) the Government's Motion for Re-Hearing; and (3) Castro's Emergency Petition for Writ of
22 Error Coram Nobis. Based upon the written briefs, oral arguments, and applicable law, the Court hereby
23 **GRANTS** the Government's motions and **DENIES** Castro's Petition for Writ of Error Coram Nobis.

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1 **II. BACKGROUND**

2 **1. History of the Case**

3 On October 22, 2014, Castro pleaded guilty to the offense of Theft, in violation of 6 CMC § 1601(a).
4 Castro was sentenced to one year of incarceration, all suspended except for seven days with credit of three
5 days for time already served. Castro was also sentenced to supervised probation for a period of one year after
6 his release from DOC. On October 26, 2015, the Court granted a stipulated motion to extend probation until
7 October 28, 2016.

8 **2. Writ of Error Coram Nobis**

9 On July 2, 2015, the Court initially heard arguments on Castro's Petition for Writ of Error Coram
10 Nobis. At the hearing, the Government stated on record that it was not served with a copy of Castro's
11 petition. Neither Castro nor his counsel appeared. The Court then took the matter off-calendar.

12 Nearly three months later, on September 24, 2015, Castro came before the Court for a review
13 hearing. At that hearing, Castro's counsel requested that the Court hear arguments on his petition. In
14 response, the Government, represented by Assistant Attorney General Barbara Cepeda, entered its non-
15 objection to Castro's petition. The Court then took the matter under advisement.

16 On October 29, 2015, the Government filed its motion to withdraw its non-objection, its motion for
17 re-hearing, and opposition to Castro's petition. The parties then stipulated to continue a hearing set for
18 November 18, 2015 to be re-scheduled to December 2, 2015.¹ On November 30, 2015, Castro filed his
19 opposition to the Government's motions.

20 **III. DISCUSSION**

21 The Court grants the Government's motions, denies Castro's petition, and denies Castro's request for
22 an evidentiary hearing for the following reasons.

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25 ¹ On November 19, 2015, the day after the Court granted the stipulation to continue the motion hearings, Castro filed
a motion for emergency status conference. The Court did not grant Castro's motion.

1 **A. Motion for Withdrawal of Non-Objection and Motion for Re-Hearing.**

2 The Government argues that it should be granted its motion to withdraw its non-objection, entered
3 at the review hearing held on September 23, 2015, for two reasons: (1) the Court's calendar was not set for
4 a motion hearing; and (2) because Castro did not file a notice of hearing, in violation of Rule 8(c) of the
5 Commonwealth Rules of Practice. NMI R. Prac. 8(c) ("Together with the filing of a written motion, a Notice
6 of Hearing shall be attached to and made a part of the pleadings."). Castro opposes the Government's motion
7 under three theories: (1) the Government does not have a constitutional right to a re-hearing;(2) the Court
8 has no jurisdiction to hear the Government's motion; and (3) the Government had notice and an opportunity
9 to be heard because the parties had stipulated to have Castro's petition heard on September 23, 2015.²

10 Both parties's arguments were not supported by case law. However, this Court has recognized that
11 it has the inherent authority to manage its calendar concerning a case, even in criminal proceedings. *See*
12 *Commonwealth v. Zhang*, Crim. No. 04-0083 (NMI Super. Ct. Apr. 22, 2005) (Order Denying Prosecution's
13 Mot. to Amend at 2). Accordingly, in light of the number of important legal issues that must be resolved for
14 the Court to render its ruling—and in light of the unusual procedural history in the case—the Court grants
15 the Government's motions and adjudicates Castro's petition on its merits.

16 **B. Castro's Petition for Writ of Error Coram Nobis.**

17 Castro, alleging to be a Philippine citizen, argues that he was provided ineffective assistance of
18 counsel during his pre-conviction proceedings because defense counsels failed to correctly advise him of
19 the mandatory deportation consequences for pleading guilty to theft. At the hearing held on December 2,
20 2015, Castro argued that the Court should hold an evidentiary hearing on this issue. Castro chiefly cites to
21 *Padilla v. Kentucky*, 559 U.S. 356 (2010) in support of his claim. Recently, in *Commonwealth v. Bashar*,
22 the Commonwealth Supreme Court extended *Padilla's* holding to the Commonwealth. 2015 MP 04 ¶ 17
23 (holding that the Sixth Amendment right to effective assistance of counsel includes the right to be informed
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25 ² The Court takes judicial notice that such stipulation was not filed in the case.

1 of whether a guilty plea carries the risk of deportation).

2 This Court has previously held that a sentencing court may not grant the remedy of writ of error
3 coram nobis on a defendant's conviction based on ineffective assistance of counsel. *Commonwealth v.*
4 *Shimabukuro*, Crim. No. 02-0254 (NMI Super. Ct. Jan. 24, 2006) (Order Dismissing Shimabukuro's Pet.
5 for Writ of Error Coram Nobis and Denying Shimabukuro's Mot. to Vacate at 5) (explaining that a convicted
6 defendant may withdraw his guilty plea under the manifest injustice prong of Rule 32(d) of the
7 Commonwealth Rules of Criminal Procedure), *aff'd*, 2008 MP 10 ¶ 25.³ Castro has not shown that this Court
8 should depart from its previous ruling. Thus, in the interest of judicial economy, the Court construes Castro's
9 motion as one made under Rule 32(d). However, even under this standard, the Court denies Castro's request
10 for relief.

11 **C. Castro's Ineffective Assistance of Counsel Claim Under Rule 32(d).**

12 For a convicted defendant to prevail under a theory that he was not correctly advised of mandatory
13 deportation consequences, he must show that (1) the deportation statute at issue was "succinct, clear, and
14 explicit"; (2) that, if so, defense counsel failed to give correct advice to the defendant regarding any
15 immigration consequences; and (3) that there was a reasonable probability that the defendant would have
16 chosen to go to trial instead of pleading guilty. *Ray v. Aldan*, Crim. No. 14-0110 (NMI Super. Ct. Dec. 23,
17 2014) (Order Denying Pet'r's Writ of Habeas Corpus at 4–5); *see Bashar*, 2015 MP 4 ¶ 15.

18 Here, Castro does not identify the deportation statute that gives rise to his claim for relief.⁴
19 Accordingly, the Court cannot evaluate Castro's claims under the *Bashar* standard—and finds that Castro
20 did not meet his burden to show that he is entitled to an evidentiary hearing on his ineffective assistance of
21 counsel claim. Accordingly, the Court denies Castro's request to hold an evidentiary hearing.

23 ³ Rule 32(d) provides that "to correct manifest injustice the court after sentence may set aside the judgment of conviction
24 and permit the defendant to withdraw his/her plea."

25 ⁴ In fact, Castro once implies that the deportation statute at issue is one that subjects him to deportation for "attempted
rape, a crime of moral turpitude." Castro's Pet. 4.

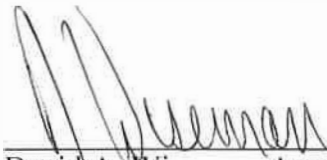
1 Even if Castro were to identify the applicable statute, the Court would not be inclined to grant an
2 evidentiary hearing as a matter of law. For the risk of mandatory deportation to carry for the crime of theft,
3 the applicable statute is likely to be 8 U.S.C. § 1227(a)(2)(A)(i)(I)-(II). Under this law, a non-citizen
4 convicted of a "crime involving moral turpitude" that carries a sentence of one year or longer, within five
5 or ten years after the date of admission, is subject to deportation. However, the term "crime involving moral
6 turpitude" is not defined under the Immigration and Nationality Act. *In re Silva-Trevino*, 24 I&N Dec. 687,
7 689 n.1 (A.G. 2008) *overruled by Olivas-Motta v. Holder*, 716 F.3d 1199, 1209 (9th Cir. 2013).

8 The Court finds the Wisconsin case of *Wisconsin v. Ortiz-Mondragon* to be instructive on this issue.
9 2014 WI APP 114, *aff'd*, 2015 WI 73. There, the court found that the deportation statute for crimes involving
10 moral turpitude was not "succinct, clear and explicit" under *Padilla. Id.* ¶ 12 ("If an attorney must search
11 federal court and unfamiliar administrative board decisions from around the country to identify a category
12 of elements that together constitute crimes of moral turpitude, and then determine whether a charged crime
13 fits that category, then the law is not 'succinct, clear, and explicit.'"). Therefore, the Court is inclined to find,
14 from the facts as alleged, that Castro would not prevail on his ineffective assistance of counsel claim.
15 Accordingly, Castro's Petition for Writ of Error Coram Nobis, construed as a motion to withdraw his guilty
16 plea under Rule 32(d), is denied as a matter of law.

17 **CONCLUSION**

18 For the foregoing reasons, the Governments' Motion to Withdraw Non-Objection and Motion for Re-
19 hearing are **GRANTED**. Castro's request for an evidentiary hearing is **DENIED**. Castro's Petition for Writ
20 of Error Coram Nobis, construed as a motion to withdraw his guilty plea under Rule 32(d), is **DENIED**.

21
22 **SO ORDERED** this 14 day of December, 2015.

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David A. Wiseman, Associate Judge