FOR PUBLICATION

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, **Plaintiff,** **v.** **AMBROSIO TAGABUEL OGUMORO, D.O.B. 05/21/1958** **HERMAN M. MANGLONA, and D.O.B. 10/06/1970** **Defendants.**	**CRIMINAL CASE NO. 15-0055** **DPS CASE NO. 13-003795/1796** **ORDER DENYING OGUMORO'S MOTION FOR RECONSIDERATION**

I. INTRODUCTION

THIS MATTER was submitted to the Court on December 3, 2015 in the form of a written motion submitted by Defendant, Ambrosio T. Ogumoro, represented by Attorneys Mark B. Hanson and Benjamin Petersburg. Plaintiff, the Government, represented by Assistant Attorney General Matthew C. Baisley, filed an opposition the next day, on December 4, 2015.

Ogumoro seeks reconsideration of the Court's Order Denying Ogumoro's Partial Motion to Dismiss, dated November 23, 2015. Based upon the parties' written briefs and applicable law, the Court issues its ruling without hearing in accordance with Rule 12(c) of the Rules of Criminal Procedure. NMI R. Crim. P. 12(c) ("Unless otherwise provided by rule, the court may . . . set a time for the making of pretrial motions or requests, and, if required, a later date of hearing."). It hereby **DENIES** Ogumoro's motion.

II. BACKGROUND

On November 23, 2015, this Court denied Ogumoro's motion to dismiss the charges as contained in Counts II, IV, VI, VIII, and IX of the Second Amended Information. Ogumoro seeks reconsideration of the Court's ruling that his statute of limitations defense was not decided on its merits at the pre-trial stages of the criminal prosecution.

III. LEGAL STANDARD

In *Commonwealth v. Eguia*, the Commonwealth Supreme Court held that the standard for a motion to reconsider in a criminal case is equivalent to Rule 59(e) of the Commonwealth Rules of Civil Procedure: "an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." 2008 MP 17 ¶ 7. Reconsideration of a court's order or judgment under Rule 59(e) is an extraordinary remedy and the moving party must meet an "exceedingly difficult" burden to obtain relief. See *Soto-Padro v. Public Bldgs. Auth.*, 675 F.3d 1, 9 (1st Cir. 2012). Commonwealth law favors the finality of court decisions, to "maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit." *Cushnie v. Arriola*, 2000 MP 7 ¶ 14. Accordingly, it is the general practice of the court "to refuse to reopen what has been decided." *Id.*

IV. DISCUSSION

Ogumoro seeks reconsideration of the Court's November 23, 2015 order under two arguments: (1) the Court erred in ruling that the statute of limitations is an affirmative defense; and (2) contrary to its ruling citing *United States v. Lundstedt*, the Court may segregate the evidence for determining whether the statute of limitations bars prosecution of those counts other than Counts II, IV, and VIII of the Second Amended Information. The Court denies Ogumoro's motion for reconsideration for the following reasons.

A. Courts Have Held That The Statute of Limitations is an Affirmative Defense.

Ogumoro argues that the Court erred in determining that the statute of limitations is an affirmative

defense.[1] He cites to *United States v. Cooper* to argue that the statute of limitations is jurisdictional, and that the trial may not proceed unless the Government shows that the instant prosecution is not time barred under 6 CMC § 107(c)(2). 956 F.2d 960, 961–62 (10th Cir. 1992) (holding that the statute of limitations is a jurisdictional bar to prosecution). However, the Court is not persuaded that Ogumoro's argument meets the threshold under *Eguia*.

The Court notes that the Tenth Circuit in *Cooper* explicitly explained that its holding is limited to its jurisdiction. *Id.* ("Despite the holdings in other circuits, the law of this circuit is that the statute of limitations is a bar to prosecution."). Other courts, including the United States Supreme Court, have explained that the statute of limitations defense is not jurisdictional—and that it is an affirmative defense. *E.g.*, *United States v. DeTar*, 832 F.2d 1110, 1114 (9th Cir. 1987) ("The statute of limitations is not jurisdictional. It provides an affirmative defense, which is waived in this circuit if it is not asserted before or at trial."); *United States v. Wild*, 551 F.2d 418, 421 (D.C. Cir. 1977) (explaining that "it is clear that the [Supreme Court of the United States] considered the statute [of limitations] to be in the nature of a defense which must be raised by the defendant.") (citing *United States v. Cook*, 84 U.S. (17 Wall.) 168, 180 (1872) ("Accused persons may avail themselves of the statute of limitations by special plea or by evidence under the general issue, but courts of justice, if the statute contains exceptions, will not quash an indictment because it appears upon its face that it was not found within the period prescribed in the limitation, as such a proceeding would deprive the prosecutor of the right to reply or give evidence, as the case may be, that the defendant fled from justice and was within the exception.")); *United States v. Soriano-Hernandez*, 310 F.3d 1099, 1103 (8th Cir. 2002) (explaining that, with the exception of the Sixth and Tenth Circuit, the First, Third, Fourth, Seventh , Eight, Ninth, Eleventh, and the D.C. Circuit hold that the statute of limitations is an affirmative defense).

---

[1] The Court did not explicitly label Ogumoro's statute of defense argument as an affirmative defense. The Court only explained that it "declined to make a ruling on whether Ogumoro prevails on his statute of limitations defense." *Commonwealth v. Ogumoro*, Crim. No. 15-0055 (NMI Super. Ct. Nov. 23, 2015) (Order Denying Ogumoro's Partial Motion to Dismiss at 5).

Therefore, Ogumoro does not meet his burden under *Eguia* on this issue. The Court does not find good cause to depart from its previous ruling on this ground.

B. This Court Cannot Issue a Ruling on the Statute of Limitations at This Time.

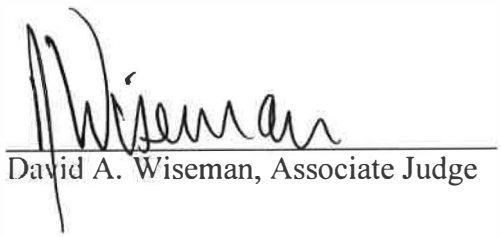
In its November 23, 2015 order, the Court ruled that it cannot issue a ruling on the statute of limitations at the pre-trial stages of the instant criminal prosecution. The Court cited to *United States v. Lundstedt* for the proposition that it may not grant a motion to dismiss on an indictment if the motion is "substantially founded upon and intertwined with evidence concerning the alleged offense." 997 F.2d 665, 666 (9th Cir. 1993) (citations omitted). The Court further explained that it may only grant dismissal if the evidence that dismissal is based on is "entirely segregable" from the evidence to be presented at trial. *Id.* In addition, the Court explained that "a motion determining factual determinations may be decided before trial only if the trial of facts surrounding the commission of the alleged offense would be of no assistance in determining the validity of the defense." *Id.* (quoting *United States v. Covington*, 395 U.S. 57, 60 (1969)).

Ogumoro states that the Court's position on *Lundstedt* is correct, but argues that the Court erred because the evidence necessary for Ogumoro to prevail on his motion to dismiss does not require a trial on the general issues. There are two reasons why the Court does not find that Ogumoro's argument meets the *Eguia* standard. First, Rule 12(e) provides that the court, for good cause, may order that a motion made before trial be deferred for determination on the general issue or until after the verdict, so long as it does not impair a party's right to appeal. NMI R. Crim. P. 12(e). Second, Ogumoro has not shown that the evidence necessary to determine whether 6 CMC § 107(c)(2)'s tolling provision applies is entirely segregable from the evidence to be introduced at trial. The Court, in the ruling at issue, found that it was necessary for the Government to show that Ogumoro was a public official as an element of the charges contained in Counts II, IV, and VIII of the Second Amended Information. Accordingly, Ogumoro has not met his burden to show that the Court is compelled to rule on the merits on his pre-trial motion to dismiss. Therefore, Ogumoro did not meet his burden under *Eguia*. The Court does not find good cause to depart from its previous rulings on his statute of limitations defense.

CONCLUSION

For the foregoing reasons, Ogumoro's motion to reconsider is **DENIED**.

SO ORDERED this 17th day of December, 2015.



David A. Wiseman, Associate Judge