

1 FOR PUBLICATION

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3 IN THE SUPERIOR COURT )  
4 FOR THE )  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS )  
BY:   
DEPUTY CLERK OF COURT

5 COMMONWEALTH OF THE ) CRIMINAL CASE NO. 10-0072D  
6 NORTHERN MARIANA ISLANDS, )  
7 )  
8 Plaintiff, ) ORDER DENYING DEFENDANT'S  
9 v. ) EMERGENCY MOTION FOR HIS  
10 JUAN CAMACHO TAITANO ) IMMEDIATE RELEASE FROM  
11 ) DEPARTMENT OF CORRECTIONS  
12 ) BECAUSE THE UNAMBIGUOUS ORAL  
13 ) PRONOUNCEMENT OF THE  
14 ) SENTENCE CONTROLS OVER THE  
15 ) WRITTEN SENTENCE  
16 )

11 I. INTRODUCTION

12 This matter came before the Court on January 29, 2016, at 1:30 p.m. in Courtroom 220 on  
13 the Defendant's Emergency Motion for His Immediate Release from Corrections As Per the  
14 Sentence and Commitment Order. The Defendant, Juan Camacho Taitano, was present in  
15 Department of Corrections custody and represented by Chief Public Defender Douglas Hartig. The  
16 Commonwealth was represented by Chief Prosecutor Chester Hinds.

17 II. BACKGROUND

18 The Defendant was arrested on March 8, 2010.<sup>1</sup> At the November 24, 2010, change of plea  
19 hearing, the Defendant pleaded guilty to two counts of Sexual Abuse of a Minor in the Second  
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24 <sup>1</sup> The arrest warrant in this case was issued on March 7, 2010. The arrest warrant was served on the Defendant on March 8, 2010.

1 Degree in violation of 6 CMC § 1307(a)(5)(A).<sup>2</sup> The Court issued a Judgment and Commitment  
2 Order on November 29, 2010.<sup>3</sup>

3 At the sentencing hearing, held on February 14, 2011,<sup>4</sup> the sentencing judge stated that he  
4 was sentencing the Defendant to a term of ten years imprisonment for each count, to run  
5 concurrently. Initially, the sentencing judge indicated that the Defendant would be sentenced to ten  
6 years and released in five years through a suspended sentence; however, he corrected himself,  
7 saying “I’m sorry,” and clarifying<sup>5</sup> that the Defendant would be *eligible for parole* in five years.<sup>6</sup>

8 A Sentence and Commitment Order was prepared by the Deputy Clerk and issued on  
9 December 27, 2011, ten months after the sentencing hearing.<sup>7</sup> The Sentence and Commitment  
10 Order included an incorrect case number, so an Amended Sentence and Commitment Order was  
11 subsequently issued on January 11, 2012, with the correct case number.<sup>8</sup> Aside from the case  
12 number, the original Sentence and Commitment Order and the Amended Sentence and  
13 Commitment Order are substantively the same.

14 In the Amended Sentence and Commitment Order, the Defendant was sentenced to the  
15 following:

16 \_\_\_\_\_

17 <sup>2</sup> The Plea Agreement is pursuant to Rule 11(e)(1)(C) of the Commonwealth Rules of Criminal Procedure, which states  
18 that the Commonwealth attorney “agree[s] that a specific sentence is the appropriate disposition of the case.” NMI R.  
19 Crim. P. 11(e)(1)(C). However, the Plea Agreement left the Defendant’s ultimate sentence up to the Court. Plea  
20 Agreement at 2.

<sup>3</sup> At the time, this case was assigned to then-Associate Judge Perry Inos. Associate Justice Perry Inos currently serves as  
a justice on the Commonwealth Supreme Court. Procedurally, all of then-Judge Inos’s cases have been reassigned to  
now-Judge Kim-Tenorio. At the time of the Defendant’s motion, Judge Kim-Tenorio was off-island. Thus, Presiding  
Judge Naraja re-assigned this case to Judge Camacho.

<sup>4</sup> At the sentencing hearing, the Commonwealth was represented by then-Assistant Attorney General Peter Prestley, and  
the Defendant was represented by then-Chief Public Defender Adam Hardwicke.

<sup>5</sup> The Court listened to the recording multiple times in the courtroom, as well as in chambers. The sentencing judge’s  
voice is clear. The attorneys’ voices are faded yet still audible, as is the voice of the probation officer.

<sup>6</sup> In 2013, 6 CMC § 4252 was amended so that defendants convicted under 6 CMC § 1307-1308 of Second, Third, or  
Fourth Degree Sexual Abuse of a Minor are ineligible for parole until they have served two-thirds of their mandatory  
minimum sentence. PL 18-03. The Defendant was sentenced in 2011.

<sup>7</sup> Generally, written sentencing orders are prepared by the Deputy Clerk for the judge’s signature.

<sup>8</sup> The Sentence and Commitment Order also cited the wrong date, February 9, 2011, for the date of the sentencing  
hearing. This error was not corrected in the Amended Sentence and Commitment Order.

1 1. Defendant is sentenced to ten (10) years of imprisonment on Count III and ten (10) years  
2 of imprisonment on Count IV. The sentences shall run concurrently. The Defendant shall  
3 serve the first five years of his sentence in both counts without the possibility of parole. He  
4 is given credit for eleven months and eight days of pre-trial incarceration.

5 2. The Defendant is fined five thousand (\$5,000) dollars.

6 3. The *second half of Defendant's sentence is suspended* under the following terms and  
7 conditions...

8 *Commonwealth v. Taitano*, Crim. No. 10-0072D (NMI Super. Ct. Jan. 11, 2012) (Amended  
9 Sentence and Commitment Order at 1-2) (emphasis added). The Amended Sentence and  
10 Commitment Order did not explicitly state a release date.

11 The Defendant filed his Emergency Motion for His Immediate Release from Corrections As  
12 Per the Sentence and Commitment Order on January 28, 2016. The Defendant argued that, since the  
13 written sentencing order suspended the second half of the Defendant's sentence, the Defendant  
14 should have been released on March 7, 2015.<sup>9</sup> The Commonwealth did not file a written  
15 opposition.<sup>10</sup>

16 At the January 29, 2016 hearing, the Commonwealth orally opposed the motion, directing  
17 the Court's attention to the audio record of the sentencing hearing. The Commonwealth argues that,  
18 since the sentencing judge's oral sentence stated that the Defendant is merely eligible for parole  
19 after five years, the Defendant is not entitled to immediate release.

### 20 **III. DISCUSSION**

21 The oral sentencing order on February 14, 2011, and the written Amended Sentence and  
22 Commitment Order issued on January 11, 2012, sentence the Defendant to different periods of  
23 imprisonment. Under the oral sentencing order, the Defendant is sentenced to ten years of  
24 imprisonment and is eligible for parole after five years. Under the written Amended Sentence and

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<sup>9</sup> The actual date of the Defendant's arrest was March 8, 2010, thus the release date under the Defendant's theory should be March 7, 2015.

<sup>10</sup> Presiding Judge Naraja transferred this case to Judge Camacho on January 29, 2016, and the Court immediately set the matter for a motion hearing because of the possibility that the Defendant might have been entitled to release in 2015.

1 Commitment Order, the Defendant is sentenced to ten years of imprisonment and the second half of  
2 the Defendant's sentence is suspended, meaning that the Defendant's release date would have been  
3 March 7, 2015. *Taitano*, Crim. No. 10-0072D (Amended Sentence and Commitment Order at 1-  
4 2).<sup>11</sup>

5 The law is very clear that when the oral and written sentencing orders conflict “[a]n  
6 unambiguous oral sentencing order prevails over the written order...except when the written order  
7 is corrected pursuant to NMI R. Crim. P. 36.” *Commonwealth v. Rios*, 2015 MP 12 ¶ 38 n.14 (citing  
8 *Commonwealth v. Santos*, 4 NMI 348, 350-51 (1996)). See also *Commonwealth v. Calvo*, 2014 MP  
9 7 ¶ 60 (“When there is a difference between the [written] sentencing order and the oral  
10 pronouncement, the oral pronouncement controls.”) (citing *Santos*, 4 NMI at 350-51); *United States*  
11 *v. Garcia*, 604 F.3d 186, 191 (5th Cir. 2010) (“Where the orally-imposed sentence conflicts with  
12 the written judgment, the oral pronouncement controls.”) (citing *United States v. Bigelow*, 462 F.3d  
13 378, 381 (5th Cir. 2006)).

14 The oral sentence controls in part because the Defendant's presence is required at  
15 sentencing. NMI R. Crim. P. 43(a). In particular, since “[t]he imposition of punishment in a  
16 criminal case affects...life and liberty,” the judge and defendant should be “facing one another” and  
17 the sentencing should not be done in secret. *United States v. Villano*, 816 F.2d 1448, 1452 (10th  
18 Cir. 1987). It is especially important for “a sentencing judge to choose his words carefully so that  
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20 <sup>11</sup> Parole and a suspended sentence are two very different things. Parole is the “conditional release of a prisoner from  
21 imprisonment before the full sentence has been served,” which is typically granted for good behavior. BLACK'S LAW  
22 DICTIONARY 964 (Abridged 9th ed. 2010). Defendants must apply for parole, and this application is reviewed by the  
23 Board of Parole. 6 CMC § 4252; NMIAC §115-10-205. Parole hearings allow for public comments, as well as input  
24 from the victims. NMIAC §115-10-401; NMIAC §115-10-405. Parolees are supervised by the Board of Parole.  
NMIAC §115-10-701; NMIAC §115-10-705; NMIAC §115-10-710. On the other hand, under a suspended sentence,  
the sentence is “postponed so that the convicted criminal is not required to serve time unless he or she commits another  
crime or violates some other court imposed condition.” BLACK'S LAW DICTIONARY 1166 (Abridged 9th ed. 2010).  
Defendants serving suspended sentences are monitored by the Office of Adult Probation, an enforcement arm of the  
Commonwealth Judiciary. 6 CMC § 4105. Determining whether the Defendant is eligible for parole, versus whether the  
second half of his sentence is suspended, dictates whether the Defendant is eligible for immediate release.

1 the defendant is aware of his sentence when he leaves the courtroom.” *Id.* The well established rule  
2 that the oral sentence controls over a conflicting written sentence ensures that a defendant is aware  
3 of his sentence and that he was not sentenced in secrecy.

4 Further, the law is clear that a court’s oral sentence is the actual sentence, and a written  
5 judgment and commitment order solely serves to “provide evidence of the sentence.” *Villano*, 816  
6 F.2d at 1451. The entry of the sentence by the clerk is not the sentence itself, rather it is “merely the  
7 formal evidence thereof.” *Watkins v. Merry*, 106 F.2d 360, 361 (10th Cir. 1939). The written  
8 sentence is often prepared by court staff after the fact, and merely serves a clerical function to  
9 memorialize the sentence imposed.

10 At the January 29, 2016, hearing, the Defendant conceded that an oral sentencing order  
11 controls when it differs from a written sentencing order. Rather, the Defendant argues, since the  
12 sentencing judge stated multiple times that the Defendant would be released after five years, that  
13 the oral sentence unambiguously sentenced the Defendant to a sentence of ten years with the second  
14 half suspended. However, in the audio recording, the sentencing judge clearly corrected himself on  
15 the record as he was giving the oral sentence. Part way through delivering the oral sentence the  
16 sentencing judge clearly stated “I’m sorry,” and corrected himself, stating that the Defendant is  
17 sentenced to ten years of imprisonment, and would be eligible for parole after five years of  
18 imprisonment. There is no ambiguity in the oral sentence—the sentencing judge’s tone and  
19 inflection make it clear that he was correcting an earlier misstatement, and that the Defendant’s  
20 actual sentence is for ten years of imprisonment, with the possibility of parole after five years.

21 The Court finds that the sentencing judge’s oral pronouncement of the sentence is  
22 unambiguous and thus it is the correct sentence, rather than the written sentence prepared by the  
23 Deputy Clerk ten months after the sentencing hearing for the sentencing judge’s signature. Thus,  
24 since the oral pronouncement controls, the Defendant was sentenced to ten years imprisonment, and

1 he is only eligible for parole after serving the first five years of his sentence. The Defendant is not  
2 entitled to immediate release and the Defendant's motion must be denied.

3 **IV. CONCLUSION**

4 Accordingly, the Defendant's Emergency Motion for His Immediate Release from  
5 Corrections As Per the Sentence and Commitment Order is **DENIED**.

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7 **IT IS SO ORDERED** this *3<sup>rd</sup>* day of February, 2016.

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12 JOSEPH N. CAMACHO  
13 Associate Judge  
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