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FOR PUBLICATION

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

COMMONWEALTH OF THE)	CRIMINAL CASE NO. 11-0196
NORTHERN MARIANA ISLANDS,)	
)	
Plaintiff,)	
)	ORDER GRANTING DEFENDANT’S
v.)	MOTION TO DISMISS PROBATION
)	REVOCATION
JEFFERY T. DELEON GUERRERO)	
)	
Defendant.)	
_____)	

I. INTRODUCTION

THIS MATTER came before the Court on Defendant’s Motion to Dismiss Probation Revocation on April 10, 2018 at 1:30 p.m. in the Multipurpose Center Room 1. The Commonwealth of the Northern Mariana Islands (“CNMI”) was represented by Chester Hinds. Jeffery T. Deleon Guerrero (“Defendant”) was present, in custody, and represented by Public Defender Nancy Dominski.

II. BACKGROUND

On August 31, 2011, this Court filed a Judgment of Conviction and Order (“JCO”) finding Defendant Guilty of Attempted Aggravated Assault & Battery. Pursuant to the plea agreement, all other charges were dropped. The Defendant was sentenced to five years in jail, all suspended except for eleven months. He was placed on probation for a period of five years. He was released from the Department of Corrections on June 26, 2012.

1 On November 28, 2017, the CNMI filed a Petition to Revoke Probation, alleging: the
2 Defendant has a balance of \$400.00 on his Probation Fee; he has not made any payments towards his
3 \$500.00 Fine; he failed to obey all laws of the Commonwealth in that he was arrested on December
4 26, 2016 for charges of Trafficking of Controlled Substance and Illegal Possession of Controlled
5 Substance in Criminal Case No. 17-0015, and; Defendant's probation will expire on June 25, 2017.

6 On February 28, 2018, Defendant, through his attorney, pursuant to 6 CMC §4113(b) &
7 §4105(c), filed a Motion To Dismiss Probation Revocation, seeking this Court to enter an order
8 dismissing the probation revocation for two reasons: lack of jurisdiction and violation of the
9 Defendant's due process pursuant to Article 1, §5 of the Commonwealth Constitution.

10 The JCO reads, "Defendant will be placed on probation for a period of five (5) years." Since
11 it does not specify that probation will begin after Defendant's release from prison, Defense argues
12 that probation therefore began on the day of sentencing, August 31, 2011, and was final as of
13 August 30, 2016.

14 On December 26, 2016, Defendant was arrested for Criminal Case No. 17-0015. He was
15 released and re-arrested on January 25, 2017. Defendant has remained in the custody and control of
16 the Commonwealth since January 25, 2017. On February 6, 2017, the Office of Adult Probation
17 filed an Affidavit of Probation/Suspended Sentence Violations ("Affidavit") signed January 6,
18 2017. It was not until November 28, 2017 that the Commonwealth filed a Petition to Revoke
19 Probation.

20 Defense argues for dismissal on two grounds. First, it argues that this Court lacks subject
21 matter jurisdiction over the Defendant because his probation term expired before the Office of
22 Adult Probation filed an affidavit under 6 CMC § 4105(d). Second, it argues that a nine-month
23 delay in filing a Petition to Revoke Probation violates the Defendant's due process.

1 The CNMI, in its Petition to Revoke Probation, asserts Defendant’s probationary term
2 would have ended on June 25, 2017, having started on the date Defendant was released from prison.
3 Defense argues in its Motion to Dismiss Probation Revocation that since there is no wording in the
4 JCO indicating when the probationary period was to begin, it began on the day of sentencing.
5 Defense provides this Court with NMI Superior Court case *Commonwealth v. Saka* No. 09-0206C
6 (NMI Super. Ct. 2012), which states, “Defendant pled guilty on October 13, 2010, and pursuant to
7 the terms of his Plea Agreement was placed on supervised probation for one year. Consequently, his
8 probation began that day and expired on October 12, 2011, unless the period of incarceration was
9 ‘tolled.’” Defense counsel argues that here, just as in *Saka*, there is nothing in the JCO that indicates
10 a delay, or toll, in the commencement of probation. Therefore, Defendant’s probation would have
11 expired on August 30, 2016—prior to the CNMI’s filing of the Affidavit or Petition to Revoke
12 Probation. Thus, this Court lacks subject matter jurisdiction.

13 Defense argues that even if this Court finds that probation did not expire on August 30,
14 2016, the Petition to Revoke Probation should be dismissed as the process violated due process. The
15 Defendant was in custody for over nine months after the filing of the Affidavit. Therefore, the
16 hearing before the judge to determine whether there is probable cause to hold the probationer for a
17 revocation hearing was neither “prompt” nor “within a reasonable time” as required by Com. R.
18 Crim. P. 32.1(a)(1) and NMI R. Crim. P. 32.1(a)(1), respectively.

19 The Commonwealth never filed an Opposition to Defendant’s Motion to Dismiss Probation
20 Revocation.

21 III. LEGAL STANDARD

22 Any ambiguities must be resolved in favor of the defendant. *Saka* citing *United States v.*
23 *Watson*, 582 F.3d 974, 986 (9th Cir. 2009). In *Commonwealth v. Odoshi*, Crim. No 98-4100 (N.M.I.

1 Super Ct. September 14, 1991) (Order) the Superior Court found it lacked jurisdiction to revoke
2 probation because the period of probation had run. Additionally, in *Commonwealth v. Hemley*, the
3 Court found that jurisdiction over the probationer expires at the conclusion of the probationary
4 period. *Commonwealth v. Hemley*, Crim No. 91-0146 (N.M.I. Super. Ct. Dec 22, 1994).

5 The Legislature does not specify a time limit on when the Government needs to bring a
6 probation violation, however, it is a violation of due process to allow a defendant to languish in jail
7 indefinitely. 6 CMC §4105 states:

8 (c) Upon the filing of a petition to revoke probation, or an affidavit, or the
9 presentation of sworn testimony . . . setting forth probable cause [of a
10 violation of probation] . . . the court shall issue a summons for the probationer
11 to appear before the Court.

12 Additionally, 6 CMC § 4113(d) states, “A probationer accused of violating any term of probation
13 shall be entitled to *reasonable notice* of the alleged violation...” (emphasis added).

14 The Commonwealth Rules of Criminal Procedure rule 32.1(a)(1) states,

15 Whenever a probationer is held in custody on the ground that he/she has violated a
16 condition of his/her probation, he/she shall be afforded a *prompt* hearing before a judge
17 in order to determine whether there is probable cause to hold the probationer for a
18 revocation hearing.”

19 (emphasis added). Finally, NMI R. Crim. P. 32.1(2) states, “The revocation hearing, unless waived
20 by the probationer, shall be held *within a reasonable time* . . .” (emphasis added).

21 IV. DISCUSSION

22 On December 26, 2016, Defendant was arrested for Criminal Case No. 17-0015. He was
23 released and re-arrested on January 25, 2017. Defendant has remained in the custody and control of

1 the Commonwealth since January 25, 2017. An Affidavit of Probation/Suspended Sentence
2 Violations was signed January 6, 2017. One month later, on February 6, 2017, the Office of Adult
3 Probation filed the Affidavit. It was not until November 28, 2017 that the Commonwealth filed a
4 Petition to Revoke Probation.

5 Defense argues in its Motion to Dismiss Probation Revocation that since there is no wording
6 in the JCO indicating when the probationary period was to begin, it began on the day of sentencing.
7 The Court assumes, though no Opposition was ever filed, that the CNMI's position on this matter is
8 that it still believes that Defendant's probationary term would have ended on June 25, 2017, as
9 indicated in CNMI's Petition to Revoke Probation. This Court believes in clarity of sentencing.
10 Judgment and Conviction Orders and Sentencing Orders should be clear and accurate, leaving
11 nothing open to interpretation. Accordingly, the Court finds that Plea Agreements and JCOs should
12 specify the date and time that probation is to begin. If the Plea Agreement and/or the JCO fail to
13 specify, for example, that probation begins "immediately after the Defendant's release from the
14 Department of Corrections," then a court may find that probation began at the time of sentencing.
15 Any ambiguities must be resolved in favor of the defendant.

16 The Court agrees with Defense's interpretation and finds that it lacks subject matter
17 jurisdiction over the Defendant in this case. Just as in *Saka*, there is nothing in Defendant's JCO to
18 indicate a delay in the commencement of probation. Therefore, Defendant's probation would have
19 expired on August 30, 2016. He was not arrested until December 26, 2016 for Criminal Case No.
20 17-0015. Additionally, the Affidavit and the Petition to Revoke Probation were filed after an
21 extended period even after he was re-arrested on January 25, 2017 and waiting in jail. Defendant's
22 probationary period expired prior to the filing of the Affidavit or Petition to Revoke Probation.
23 Consequently, this Court no longer has subject matter jurisdiction over the Defendant in this case.

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Accordingly, this Court hereby **GRANTS** Defendant's Motion to Dismiss Probation
Revocation for lack of subject matter jurisdiction and a violation of the Defendant's due process.

SO ORDERED this 13th day of April, 2018.



Kenneth L. Govendo
KENNETH L. GOVENDO
Associate Judge