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

**COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,**

Plaintiff,

v.

ESEKIEL "Easy" SMITH,

Defendant.

) **Traffic Case No. 18-03006**

) **ORDER DENYING THE**
) **COMMONWEALTH'S MOTION TO**
) **RECONSIDER BECAUSE:**
) **(1) THERE WAS NO ECONOMIC LOSS**
) **BY THE VICTIM BECAUSE HE DID**
) **NOT PAY THE DFEMS AND CHCC**
) **BILLS; AND**
) **(2) THE ESTATE OF AGULTO**
) **CANNOT RECOVER RESTITUTION**
) **AS IT IS NOT A "DIRECT VICTIM" OF**
) **DEFENDANT'S CRIMES PURSUANT**
) **TO 6 CMC § § 9101, 4109(B)**

I. INTRODUCTION

THIS MATTER came before the Court on a Motion to Reconsider on June 24, 2020 at 10:00 a.m. at the Supreme Court courtroom. Assistant Attorney General J. Robert Glass, Jr. appeared on behalf of the Commonwealth Government ("Commonwealth"), and Assistant Public Defender Jean Pierre Nogues appeared on behalf of Defendant Esekiel "Easy" Smith ("Defendant Smith"),¹ who appeared in custody. The Commonwealth argued that the Court's March 30, 2020 Order ("March 30, 2020 Order") did not address an issue presented to it,² specifically the issue of whether Melton Agulto can recover for the bills sent to him from the

¹ Esekiel Smith is also known by his nickname "Easy."

² Order finding that (1) entities, such as DFEMS and CHCC, are not eligible to receive restitution when they are only "indirect third-party victims" of a crime; (2) the tort defense of comparative negligence is not applicable here because the victim's family members did not negligently contribute to their damages; and (3) voluntary offertory gifts to priests for performing the funeral mass are not economic losses for purposes of restitution under 6 CMC § 4109 issued on March 30, 2020.

1 Department of Fire and Emergency Medical Services (“DFEMS”) and the Commonwealth
2 Healthcare Corporation (“CHCC”). Furthermore, the Commonwealth argues that to deny
3 restitution to Melton Agulto’s estate for these bills would be clear error and a manifest
4 injustice.

5 Defendant argued that the Court reviewed all disputed matters in the Order and made
6 all relevant determinations therein.

7 For the reasons stated below, the Commonwealth’s Motion to Reconsider is **DENIED**.

8 **II. LEGAL STANDARD**

9
10 “A motion to reconsider is allowed if there is an ‘intervening change of controlling
11 law, the availability of new evidence, or the need to correct a clear error or prevent manifest
12 injustice.’” *Commonwealth v. Taitano*, 2017 MP 19 ¶ 35 (quoting *Commonwealth v.*
13 *Guerrero*, 2014 MP 2 ¶ 2).³ This standard applies in both civil and criminal matters. *See*
14 *Commonwealth v. Eguia*, 2008 MP 17 ¶ 7.

15 “A clear error exists only if after reviewing all the evidence we are left with a firm and
16 definite conviction that a mistake has been made.” *In re Estate of Pangelinan*, 2019 MP 12 ¶
17 13 (citation omitted); *see also Nagy v. Grp. Long Term Disability Plan for Emples. of Oracle*
18 *Am., Inc.*, 739 F. App’x 366, 368 (9th Cir. 2018) (stating that “for a finding to be clearly
19 erroneous, it must strike us as wrong with the force of a five-week old, unrefrigerated dead
20 fish”) (internal citation omitted). The question asked is whether the Court rationally could
21 have found as it did. *Liu v. Commonwealth*, 2006 MP 5 ¶ 17.

22
23 With respect to ‘manifest injustice’:

24 There is no judicial consensus ... but several courts have applied the Black’s
25 Law Dictionary definition, which states that “manifest injustice” is an error
26 in the trial court that is direct, obvious, and observable, such as a defendant’s
guilty plea that is involuntary or that is based on a plea agreement that the

³ Here, the Commonwealth did not assert an intervening change of controlling law or the availability of new evidence as grounds for its Motion to Reconsider.

1 prosecution rescinds. A party may only be granted reconsideration based on
2 manifest injustice if the error is apparent to the point of being indisputable.
3 In order for a court to reconsider a decision due to “manifest injustice,” the
4 record presented must be so patently unfair and tainted that the error is
5 manifestly clear to all who view it.

6 *Shearer v. Titus (In re Titus)*, 479 B.R. 362, 367-68 (Bankr. W.D. Pa. 2012).

7 **III. BACKGROUND**

8 In the evening of August 18, 2018, Melton Agulto (“Victim or Agulto”) an adult male
9 was intoxicated and got into two physical altercations—first at the San Vicente basketball
10 court and then later at his home. These altercations caused Agulto to sustain injuries, which
11 resulted in DFEMS being called to transport Agulto from his home to CHCC. Agulto was still
12 intoxicated at the time he was admitted to CHCC. In his intoxicated state, Agulto acted
13 belligerently to CHCC personnel and other patients. Subsequently, CHCC personnel called
14 for police assistance. Agulto fled from CHCC before the police arrived. CHCC personnel
15 informed the police that Agulto headed north on foot on middle road. The police searched for
16 Agulto but could not locate him. After evading the police search, Agulto continued north in
17 Puerto Rico walking in the middle of the street.

18 Sometime after midnight on August 19, 2018, Esekiel Smith, while driving north in
19 Puerto Rico, struck Agulto as Agulto walked in the middle of the street. Smith fled the scene
20 of the accident. Sometime later, the accident was reported to the police. Agulto was
21 transported to CHCC in an ambulance operated by DFEMS. Unfortunately, Agulto died as a
22 result of his injuries.

23 In the early morning hours of August 19, 2018, the same morning of the accident,
24 Smith appeared at the police station and voluntarily surrendered himself to the police.

25 On January 30, 2019, Defendant accepted responsibility and pled guilty to violating 9
26 CMC § 6101(a) (leaving an accident scene) and 9 CMC § 7104(a) (reckless driving).

1 Also on January 30, 2019, Smith waived his right to a Pre-Sentence Investigation
2 Report and was sentenced to five (5) years and six (6) months imprisonment, with the last six
3 (6) months suspended.⁴ As part of Smith's sentence, he was ordered to pay restitution to
4 Agulto's family and made eligible for work release while serving his sentence to pay his
5 restitution. The parties agreed that, at a minimum, Smith owed \$1,000 in restitution, which
6 was immediately paid from the bail money posted by Smith. However, the parties disagreed
7 as to how much more Smith owed in restitution and to whom.

8 On February 1, 2019, the Commonwealth filed its Notice of Next of Kin and Motion
9 for Restitution Hearing to determine the full amount of restitution to be paid by Smith.
10

11 On June 5, 2019, the Court held a Restitution Hearing. The Commonwealth was
12 represented by Assistant Attorney General J. Robert Glass, Jr., and Defendant Smith, who
13 appeared in custody, was represented by Assistant Public Defender Jean Pierre Nogues.

14 At the June 5, 2019 Restitution Hearing, the Court received the following admitted
15 exhibits: (1) CHCC's morgue facility bill; (2) Cabrera's Funeral Home bill; (3) a statement by
16 Gloria Cabrera; (4) the receipt for Victim's death certificate; (5) the invoice from Island
17 Touch; (6) the invoice from DFEMS; (7) the Department of Public Safety's Brief Report
18 concerning the accident; (8) an Affidavit of Records Custodian / Business Records Certificate
19 of Authenticity; and (9) a letter from Carlo Andre Canepa, MD. Also, the Court heard the
20 sworn testimonies of: (1) Department of Public Safety Officer James A. Omar; (2) Department
21 of Public Safety Officer Norris Kwon; (3) CHCC employee Roselyn Gibbons; and (4)
22 Victim's mother, Gloria Cabrera.
23

24 At the end of the June 5, 2019 Restitution Hearing, the Court ordered the parties to
25 submit briefs on the following issues: (1) the circumstances in which Commonwealth
26

⁴ 6 CMC § 4104(a); see also *Commonwealth of the N. Mar. I. v. Calvo*, 2014 MP 7 ¶ 64.

1 Government agencies are entitled to restitution; and (2) whether the tort defense of
2 comparative negligence could apply in the criminal restitution context.

3 On February 11, 2020, the Petition for Letters of Administration was filed *In Re the*
4 *Estate of Melton C.J. Agulto*, CV 20-0054 (“Estate of Agulto”) opening the probate action for
5 the Estate of Agulto.

6 On March 30, 2020, the Court issued an Order finding that (1) entities, such as DFEMS
7 and CHCC, are not eligible to receive restitution when they are only “indirect third-party
8 victims” of a crime; (2) the tort defense of comparative negligence is not applicable here
9 because the victim's family members did not negligently contribute to their damages; and (3)
10 voluntary offertory gifts to priests for performing the funeral mass are not economic losses
11 for purposes of restitution under 6 CMC § 4109.

13 On April 7, 2020, the Commonwealth filed its Motion to Reconsider Order that Victim
14 is Not Entitled to Restitution for CHCC and DFEMS Bills. On April 8, 2020, Defendant filed
15 his Opposition to Prosecution’s Motion for Reconsideration. On April 8, 2020, the
16 Commonwealth filed its Reply.

18 On August 13, 2020, counsel for the Estate of Agulto stated at the Final Distribution
19 Hearing for *In Re the Estate of Melton C.J. Agulto*, CV 20-0054 that the family desired to
20 allow the decedent to rest in peace and did not wish the Estate to pursue a wrongful death
21 action against Defendant Smith. 7 CMC § 2102.

22 DFEMS and CHCC did not file any claims in *In Re the Estate of Melton C.J. Agulto*,
23 CV 20-0054 while the Estate was open. 7 CMC § 2601.

24 IV. DISCUSSION

25 A. Unpaid Medical Bills Are Not Economic Losses

26 Here, because Agulto is unfortunately deceased, the law does not allow restitution to
be paid directly to Agulto. Instead, criminal restitution, if any, must be paid to Agulto’s Estate.

1 However, the Court finds, for the reasons stated below, that Defendant Smith cannot be
2 ordered to pay restitution to *In Re the Estate of Melton C.J. Agulto*, CV 20-0054 because: (1)
3 Agulto himself did not experience an “economic loss” as a result of Defendant Smith’s crimes
4 because Agulto never paid the DFEMS and CHCC bills (“medical bills”); and (2) *In Re the*
5 *Estate of Melton C.J. Agulto*, CV 20-0054 cannot recover restitution in its own name because
6 the Estate was not a “direct victim” of Defendant Smith’s crimes.

7
8 In the Commonwealth of the Northern Mariana Islands, “[i]f a person is convicted of
9 any offense defined in this title or any violation of the Commonwealth Code, the court shall,
10 if appropriate, order the person to pay restitution as a condition of probation.” 6 CMC §
11 4109(a). Restitution is defined as “*reimbursement or compensation* to the victim or victims,
12 as defined in 6 CMC § 9101, for every determined *economic loss* incurred as a result of the
13 person’s criminal conduct[.]” 6 CMC § 4109(b) (emphasis added).

14 Here, because the purpose of criminal restitution is to “reimburse” or “compensate”
15 Agulto for his economic losses. However, Agulto never paid the DFEMS and CHCC bills.
16 Thus, Agulto cannot be “reimbursed” or “compensated” for an expense if the expense was not
17 paid. Therefore, Agulto’s unpaid medical bills are not economic losses for purposes of
18 restitution under 6 CMC § 4109 because Agulto did not pay the DFEMS and CHCC bills.
19 Though the Commonwealth argued in its Motion to Reconsider that Agulto was billed directly
20 by DFEMS and CHCC and that the billers “expected payment,” in a criminal restitution
21 action, the expectation of the billers is immaterial. Because the Commonwealth failed to
22 present any evidence that Agulto paid the DFEMS and CHCC bills, therefore Agulto did not
23 experience an “economic loss” under these facts.
24

25 **B. DFEMS And CHCC Must Be Direct Victims to Recover Criminal Restitution**

26 Even if Agulto had paid these bills, the Court cannot order restitution to be paid to *In*
Re the Estate of Melton C.J. Agulto, CV 20-0054 because the estate was not a “direct victim”

1 of Defendant Smith's crimes.⁵ 6 CMC § 9101(a)(4) defines the term "victim" for the purposes
2 of 6 CMC § 4109(a) as "[a]ny corporation, business, *estate*, trust, partnership, association,
3 joint venture, government, governmental department, agency or instrumentality, or any other
4 legal or commercial entity when that entity is a *direct victim* of a crime." (emphasis added).
5 Therefore, because the plain language of the definition of "victim" in 6 CMC § 9101(a)(4)
6 clearly states that an "estate" is a "victim" "when [the estate] is a direct victim of a crime,"
7 and the analysis of a statute ends if the meaning of its plain language is clear,⁶ an estate must
8 be a direct victim of a defendant's crime for it to be considered a victim for purposes of 6
9 CMC § 4109(a).⁷ Any other interpretation would render the plain language of 6 CMC §
10 9101(a)(4) meaningless because such an interpretation would nullify the phrase, "*when that*
11 *entity is a direct victim of a crime*" (emphasis added). *See Saipan Achugao Resort Members'*
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16 ⁵ As the Court noted above, Agulto cannot pay these DFEMS and CHCC bills himself because he is unfortunately
17 deceased. Additionally, Agulto's family members did not pay these DFEMS and CHCC bills and are under no
18 legal obligation to do so. Therefore, Agulto's family members cannot be awarded this criminal restitution in their
19 own name as the family members are not direct victims for purposes of 6 CMC § 4109(a).

20 ⁶ "When interpreting a statute, [courts] begin by examining its plain language; if the statute's meaning is clear,
21 [the] analysis ends there." *Commonwealth v. Camacho*, 2019 MP 2 ¶ 10.

22 ⁷ The Court notes however that there is a narrow exception to this rule born out of an apparent tension between
23 6 CMC § 9101(a)(4) and 6 CMC § 4109(b)(4). As stated above, 6 CMC § 9101(a)(4) defines "victim" as any
24 "estate [...] when that entity is a direct victim of a crime." However, 6 CMC § 4109(b)(4) defines "economic
25 loss" to include "[b]urial, funeral, cremation or other expenses incurred by the family or estate of a homicide
26 victim as a result of the crime" – a situation in which the estate would not be a direct victim of the crime.
Therefore, to prevent interpreting 6 CMC § 9101(a)(4) in a way that conflicts with 6 CMC § 4109(b)(4), the
Court finds that an estate can recover criminal restitution to reimburse or compensate the estate for the funeral
services expenses paid by the estate of the homicide victim for whom the estate came into being. However, this
exception is inapplicable here because Agulto's mother paid the expenses for Agulto's funeral and the Court
already ordered Defendant Smith to pay restitution to Agulto's mother for these funeral expenses and payments
in its March 30, 2020 Order.

The Court notes that the phrase "or other expenses" as used in 6 CMC § 4109(b)(4) does not include every
conceivable expense paid by an estate. Pursuant to the canon of statutory construction *ejusdem generis*, "when a
general phrase follows a list of specifics, the general phrase will be interpreted to include only items of the same
type as those listed." *State v. Hearn*, 961 So. 2d 211, 219 (Fla. 2007). Here, the general phrase, "other expenses
incurred" follows the specific list of: "[b]urial, funeral, [and] cremation" – all of which refer to expenses incurred
in preparing the deceased's body. 6 CMC § 4109(b)(4). Therefore, the phrase "other expenses incurred" in 6
CMC § 4109(b)(4) only refers to the expenses for items and services that have a nexus to funerals or funeral-like
ceremonies not otherwise listed in 6 CMC § 4109(b)(4) – for example: wakes, the cost of the casket, ash
scattering fees, etc.

1 *Ass'n v. Wan Jin Yoon*, 2011 MP 12 ¶ 23 (“One statutory provision should not be construed
2 to make another provision [either] inconsistent or meaningless.”).⁸

3 To satisfy the “direct victim” requirement, the estate must be the object “against which
4 the probationer’s crimes had been committed—that is, [...] the immediate object[] of the
5 probationer’s offenses.” *People v. Martinez*, 36 Cal. 4th 384, 393 (2005). Therefore, an estate
6 is *not* the direct victim of a crime committed against the person for whom the estate is opened.
7 See *People v. Runyan*, 54 Cal. 4th 849, 853 (2012) (“As an initial matter, we agree with
8 defendant that, for purposes of the mandatory restitution provisions, the estate is not itself a
9 ‘direct victim’ of a crime that caused the decedent’s death. Thus, mandatory restitution is not
10 payable to the estate for economic loss the estate itself has sustained as a result of the death.”).

11 Here, the *In Re the Estate of Melton C.J. Agulto*, CV 20-0054 is not a “direct victim”
12 of Defendant Smith’s reckless driving and leaving the scene of the accident because the Estate
13 of Agulto was not the immediate object of these crimes.⁹ Therefore, Defendant Smith does
14 not owe restitution to *In Re the Estate of Melton C.J. Agulto*, CV 20-0054 under 6 CMC §
15 4109.
16

17 **C. In the CNMI, Estates Cannot Recover Criminal Restitution in Place of The Actual**
18 **Victim¹⁰**

19 The Commonwealth, unlike several other jurisdictions, does not have a law that
20 explicitly states that a decedent’s estate can recover criminal restitution in the place of the
21 decedent. 18 U.S.C. § 2259(c)(4) (“In the case of a victim who is under 18 years of age,
22 incompetent, incapacitated, or deceased, the legal guardian of the victim *or representative of*
23

24
25 ⁸ Additionally, because 6 CMC § 9101(a)(4) already lists “estates” and provides the mechanism for an estate to
26 recover criminal restitution, “estates” cannot be include in the catchall 6 CMC § 9101(a)(5) definition of
“victim.” 6 CMC § 9101(a)(5) (“Any other person whom the court determines has suffered economic loss as a
result of the probationer’s criminal activities.”).

⁹ There was no evidence presented to the Court that Defendant Smith committed criminal offenses directly
against *In Re the Estate of Melton C.J. Agulto*, CV 20-0054, such as embezzling money from the estate or
criminally defrauding the estate.

¹⁰ Of course, decedent’s estate can pursue a civil lawsuit.

1 *the victim's estate*, another family member, or any other person appointed as suitable by the
2 court, may assume the crime victim's rights under this section [.]” (emphasis added)); 18
3 U.S.C. § 3663A(a)(1) (“[W]hen sentencing a defendant convicted of an offense described in
4 subsection (c), the court shall order [...] that the defendant make restitution to the victim of
5 the offense or, if the victim is deceased, to the victim’s estate.”); Cal Const, Art. I § 28(e)
6 (“The term ‘victim’ also includes the person’s spouse, parents, children, siblings, or guardian,
7 and includes a lawful representative of a crime victim who is deceased[.]”); MCLS §
8 780.766(2) (“[W]hen sentencing a defendant convicted of a crime, the court shall order [...]
9 that the defendant make full restitution to any victim of the defendant’s course of conduct that
10 gives rise to the conviction or to the victim’s estate.”); Tex. Code Crim. Proc. Art. 42.037(d)
11 (“If the court orders restitution under this article and the victim is deceased the court shall
12 order the defendant to make restitution to the victim’s estate.”); Fla. Stat. § 775.089(1)(c)(1)
13 (defining “victim” as “[e]ach person who suffers property damage or loss, monetary expense,
14 or physical injury or death as a direct or indirect result of the defendant’s offense or criminal
15 episode, and also includes the victim’s estate if the victim is deceased, and the victim’s next
16 of kin if the victim is deceased as a result of the offense.”); Iowa Code § 910.3B(1) (“In all
17 criminal cases in which the offender is convicted of a felony in which the act or acts committed
18 by the offender caused the death of another person, [...] the court shall also order the offender
19 to pay at least one hundred fifty thousand dollars in restitution to the victim’s estate if the
20 victim died testate.).

23 The Commonwealth law that comes closest to matching the language of the other
24 jurisdictions mentioned above is 6 CMC § 9101(a)(3)(G). 6 CMC § 9101(a)(3) states in full
25 that the term “victim” includes:
26

In the case of a victim who is under 18 years of age, incompetent,
incapacitated, or deceased, any of the following (*in order of preference*):
(A) A spouse;

- (B) A legal guardian;
- (C) A parent;
- (D) A child;
- (E) A sibling;
- (F) *Another family member*; or
- (G) *Another person designated by the court.*

6 CMC § 9101(a)(3) (emphasis added).

The phrase, “another person designated by the court,” is not intended to include representatives of the decedent’s estate solely because of their representative status. Instead, this language refers to friends, caretakers, domestic partners, or other individuals that are affected by the criminal defendant’s actions but are not specifically mentioned by 6 CMC § 9101(a)(3). The plain language of 6 CMC § 9101(a)(4) states that the category of “another person designated by the court” is the last of seven (7) categories that are ranked “in order of preference.” Including representatives of an estate in the phrase “another person designated by the court” would create an absurd result because the order of preference for restitution awards would be turned upside down by awarding restitution to distant family members before awarding restitution to the estate of the actual victim, which logically should be first in line. *Compare* 6 CMC §9101(a)(3)(F), *with* 6 CMC §9101(a)(3)(G). To avoid interpreting 6 CMC § 9101(a)(3)(G) in a way that would lead to an absurd result, the phrase “another person designated by the court” does not include administrators and executors in their capacity as representatives of a decedent’s estate. *See Commonwealth Ports Auth. v. Hakubotan Saipan Enters.*, 2 NMI 212, 224 (1991) (“A court should avoid interpretations of a statutory provision which would defy common sense or lead to absurd results” (citation omitted)).

D. DFEMS And CHCC Could Have Sought Legal Recourse Through Other Means

DFEMS and CHCC are not left without legal recourse to collect the money owed to them by Agulto. For example, as the Court stated in its March 30, 2020 Order, and the Supreme Court stated in *Commonwealth of the N. Mar. I. v. Saburo*, 2002 MP 3 ¶ 22, this

1 “result does not preclude third parties, such as [DFEMS and CHCC], the freedom to seek a
2 remedy by civil tort action.” *See also* 6 CMC § 4109(f); 7 CMC § 2601(a). Additionally,
3 DFEMS and CHCC could have filed claims as a creditor in *In Re the Estate of Melton C.J.*
4 *Agulto*, CV 20-0054. Had DFEMS and CHCC filed claims as a creditor, DFEMS and CHCC
5 would have been second in line to receive the estate’s assets. 8 CMC § 2925(a)(2) (“If the
6 applicable assets of the estate are insufficient to pay all claims in full, the personal
7 representative shall, subject to the provisions of chapter 6 of this division [8 CMC § 2601 et
8 seq.], make payment in the following order:

9 (1) Costs and expenses of administration;

10 (2) Reasonable funeral expenses; and reasonable and necessary medical and hospital
11 expenses of the last illness of the decedent, including compensation of persons attending
12 him[....]”).
13

14 Here, *In Re the Estate of Melton C.J. Agulto*, CV 20-0054 opened on February 11,
15 2020. DFEMS and CHCC had sixty (60) days from the date of first publication to file a
16 creditor claim. NMI R. PROB. P. 11. However, DFEMS and CHCC did not file any creditor
17 claims. Therefore, DFEMS and CHCC creditor claims, if any, are “forever barred” from any
18 attempt to collect from the Estate of Agulto. NMI R. PROB. P. 11
19

20 V. CONCLUSION

21 In summary of the March 30, 2020 Order and the Court’s decision here regarding the
22 Commonwealth’s Motion for Reconsideration:

23 (1) Agulto did not experience an economic loss because he did not pay the medical
24 bills from Department of Fire and Emergency Medical Services and the Commonwealth
25 Health Care Corporation; and (2) the Department of Fire and Emergency Medical Services,
26 the Commonwealth Health Care Corporation, and *In Re the Estate of Melton C.J. Agulto*, CV
20-0054 cannot recover criminal restitution in their own names under these set of facts

1 because they are not “direct victims” of Defendant Smith’s 9 CMC § 6101(a) (leaving an
2 accident scene) and 9 CMC § 7104(a) (reckless driving).

3 Therefore, for the reasons stated above, the Commonwealth’s Motion to Reconsider
4 is **DENIED**.

5 **IT IS SO ORDERED** this 18th day of September 2020.

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9 **JOSEPH N. CAMACHO**, Associate Judge

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