

At the conclusion of the hearing, the Court determined, and the parties agreed, that the relevant issues for disposition of Microl's motion were:

1. Whether Microl was a victim of crime within the language of Article I, Section 11 of the CNMI Constitution under the facts presented;
2. Whether Microl has standing to challenge the Court's sentence inasmuch as Microl was not a party to the criminal proceedings;
3. Whether the sentence of the Defendant was an illegal sentence and hence correctable pursuant to 6 CMC §4114.

After framing the issues as such, the Court took the motion under advisement. Because these issues raise questions of law concerning the scope and application of Article I, Section 11 of the CNMI Constitution not heretofore addressed, the Court issues its determination in this Memorandum Decision.

FACTS

On June 27, 1990, Hyeon Hee Jong rented a Toyota Corolla from Microl. Sometime during the early morning hours of June 29, 1990, the Defendant, Jung Yeong Min, struck a power pole while driving this vehicle on Beach Road, Saipan. Both the vehicle and power pole were damaged. According to Microl, the Defendant was not authorized to drive the vehicle under its rental agreement with Jong. The Defendant was charged with Driving while Under the Influence (DUI) in violation of 9 CMC §7105 and Driving

Without a Valid Driver's License, in violation of 9 CMC §2201.

Later that morning, the Defendant was taken to Court by a police officer from the Department of Public Safety (DPS) for the Court's regular traffic arraignment calendar.

Through a plea agreement made with the Government, the Defendant plead guilty to the DUI charge in exchange for the dismissal of the 9 CMC §2201 charge and a recommendation by the Government that he be sentenced to the mandatory minimum sentence for first-time DUI offenders.

The Court accepted the plea arrangement and found the Defendant guilty of DUI. The Court then sentenced the Defendant to 30 days in jail with 27 days suspended for a period of one year and credit for time served. The Court also ordered the Defendant to pay a \$400.00 fine and suspended his driver's license for 30 days.

Among its conditions for the suspension of his jail term, the Court ordered the Defendant to perform 24 hours of community work service and pay restitution to the Commonwealth Utilities Corporation (CUC) for damages to the power pole.

The Defendant has duly served his sentence and complied with all the conditions for the suspension of his jail term except the restitution payment to CUC because the dollar amount is not yet known.

On July 2, 1990, the Defendant was served with the Microl motion that is now before the Court. The motion asks this Court to correct the Defendant's sentence to include restitution of

\$8,000.00 from the Defendant to Microl. Microl asserted in its motion that the car had been rendered useless by the Defendant in the collision with the power pole and that it had been valued at \$8,000.00.

I. IS MICROL A VICTIM?

Microl claims that it is a victim of crime within the meaning of Article I, Section 11 of the CNMI Constitution. It is asserted that Microl attains this status as a result of the Defendant's DUI conviction and the fact that the Defendant wrecked its vehicle while intoxicated. As such, Microl claims it is a victim of the Defendant's violation of the DUI statute and is entitled to restitution from the Defendant.

Article I, Section 11 of the CNMI Constitution reads:

Section 11: Victims of Crime.

The right of the people to be secure in their persons, houses and belongings against crime shall be recognized at sentencing. Restitution to the crime victim shall be a condition of probation and parole except upon a showing of compelling interest.

Undeniably, the plain language of this section is sufficiently broad in scope to include a wide range of victims and different kinds of losses. However, this section is silent on the scope of construction to be given the term "crime victim." Moreover, this section makes no provision for harmonizing the due process rights of defendants and the restitution rights of

victims.^{1/}

Although the Court's task in this matter would be made much easier with the benefit of legislative provisions providing guidance in the application of this section of Article I, the Court recognizes the self-executing nature of this section and cannot ignore the import of its mandate. In order to carry out this mandate, however, it is necessary for the Court to first examine the applicable rules of constitutional construction.

Where the meaning of a particular term in a constitutional provision becomes a key issue, the interpretation of that term is the responsibility of the Court. Pangelinan v. CNMI, 2 CR 1148 (D.N.M.I. App. Div. 1987); House of Representatives of the CNMI v. Senate of the CNMI, 3 CR 256 (C.T.C. 1987).

The general principles which apply to statutory construction are equally applicable in cases of constitutional construction. Pangelinan v. CNMI, 2 CR 1148 (D.N.M.I. App. Div. 1987). The fundamental principle of constitutional construction is that effect must be given to the intent of the framers and the people adopting it. This is the polestar in the construction of constitutions. Whitman v. Oxford Nat'l. Bank, 176 U.S. 559, 20 S.Ct. 477, 44 L. Ed. 587.

^{1/} Article I, Section 5 of the CNMI Constitution provides, "No person shall be deprived of life, liberty or property without due process of law." The vast majority of states have enacted comprehensive legislation providing restitution for victims of crimes while at the same time ensuring a criminal defendant's due process rights. See, 21A Am Jur 2d, Criminal Law, Sections 1051-58.

When determining the intent of the framers, the rule is well established that recourse may be had to proceedings in the convention which drafted the provision. Pollock v. Farmers Loan & Trust Co., 157 U.S. 429, 15 S.Ct. 673, 39 L. Ed. 759, modified on other grounds 158 U.S. 601, 15 S.Ct. 912, 39 L. Ed. 1108.

Where the construction of a constitutional amendment is unclear and the legislature has enacted a law placing a reasonable construction upon the amendment, courts will ordinarily follow the legislative construction.'/_ Kaiser v. Hopkins, 58 P. 2d 1278 (Cal. 1936); Lundberg v. County of Alameda, 298 P. 2d 1 (Cal. 1956).

The constitutional committee responsible for submitting recommendations on delegate proposals to the 1985 Constitutional Convention reviewed a draft version of Article I, Section 11.^{3/} This original draft version submitted by the delegates to the committee reveals that the legislature was to provide for the funding and administration of a victim-of-crime assistance program. "Victims" were to be limited to those persons suffering physical and other types of injuries as determined by the legislature.

The Committee replaced this proposal with a model from the

^{2/} The 1985 Constitutional Convention Amendment 2 added Article I, Section 11 to the CNKI Constitution.

^{3/} The committee's recommendation was in the form of a report entitled, REPORT TO THE CONVENTION BY THE COMMITTEE ON PERSONAL RIGHTS AND NATURAL RESOURCES. Those materials were supplied to the Court by the Defendant's counsel.

state of Michigan. Under the Michigan model, the government was no longer responsible for administering and funding a victim of crime program. Instead, the Michigan model provided that restitution would come directly from the perpetrator of the crime.

Another significant difference between the original version and the Michigan model was that anyone suffering injury to property as a result of crime was now entitled to restitution. The intent to include persons who suffered injuries to property as "crime victims" is made abundantly clear in the prefatory language of the Michigan model which provided, "The right of the people to be secure in their persons, houses and belongings against crime shall be recognized at sentencing." Committee Recommendation No. 8, Second Northern Marianas Constitutional Convention, 1985 (emphasis added).

The Michigan model with its prefatory language was adopted by the 1985 Constitutional Convention and is now Article I, Section 11. The only difference between the Michigan model and the present Article I, Section 11 is that the Michigan model required legislative action for its implementation and the present Article I, Section 11 does not.

The foregoing analysis clearly points out the intent of the framers of Article I, Section 11 to establish the right of victims of crime to restitution for injuries to their person or property but provides little help in determining the intended scope of construction for the term "crime victim." Moreover, as

noted supra, any determination as to the scope of construction given to the term "crime victim" must necessarily take into consideration the due process rights of those persons potentially liable for restitution payments.

A review of the Commonwealth Code^{5/} and the recently enacted Victim Notification of Offender's Release Act of 1990, Pub. L. No. 7-6^{6/} (to be codified at 6 CMC §§4117-4118) does not provide the Court with any further insight on this issue.

In accordance with the general rule that harmony in constitutional construction should prevail whenever possible, an amended constitution must be read as a whole, as if every part of it had been adopted at the same time and as the same law. Badger v. Hoidale, 88 F. 2d 208 (8th Cir. 1937).

^{5/} 6 CMC §4109 specifies that the Court may order a Defendant convicted of any offense in Title 6 to pay restitution to the owner or person damaged. To say that Title 6 is the only area of the Commonwealth Code where victims are entitled to restitution rights would be an unreasonable construction of Article I, Section 11. Title 9 of the Commonwealth Code contains numerous sections, where if violated, would create "victims of crime" for Article I, Section 11 purposes.

^{6/} Section 2(1) of P.L. 7-6 defines "crimes against the person" as any offense described in 6 CMC 551101-1434. Section 2(3) of P.L. 7-6 defines "victims" as those persons who were victims of crimes against the person for which the prisoner or parolee was convicted. To the extent that the legislature limited the definition of "victims" in P.L. 7-6 to those persons suffering injury as a result of crimes against their person and the fact that Article I, Section 11 includes crimes against property, the Court concludes that this definition of "victim" is limited to the subject matter of P.L. 7-6 and is inapplicable to Article I, Section 11 of the CNMI Constitution.

To this end, the Court shall construe "crime victim" as used in Article I, Section 11 harmoniously with the due process provision of Article I, Section 5. Accordingly, the Court construes the term "crime victim" as meaning any person or entity that suffers personal injury or pecuniary loss which is established as being proximately caused by the Defendant's actions that surrounded his criminal activity either at trial or upon conviction of the offense.

Such a construction provides the broadness in scope intended by the framers of this section while ensuring that a defendant will not be deprived of his due process rights by being required to pay restitution for losses that have not been established as being proximately caused by his actions surrounding the criminal activity for which he was convicted.

Following this construction, it becomes apparent that Microl cannot be considered a "crime victim" for Article I, Section 11 purposes. The mere fact that the operator of a motor vehicle who was involved in an accident was intoxicated does not render him liable for damages therefrom where it does not appear that his condition was the proximate cause of the accident. 7A **Am** Jur 2d, Automobiles and Highway Traffic, Section 775.

The Defendant in the instant case was convicted under 9 CMC §7105(1) after a breathalyzer test established his blood alcohol concentration as being in excess of .10. He was not convicted under 9 CMC §7105(3) which employs an impairment standard as a basis for DUI convictions. On its face, the Defendant's DUI

conviction does not establish that his intoxication was the proximate cause of the collision with the power pole. Even if the Defendant had not plead guilty and the matter had gone to trial, proximate cause still would not have been established.^{7/}

The resolution of questions of fact such as whether the Defendant's intoxication was the proximate cause of the collision and hence the damage to Microl's vehicle are properly a matter for a trier of fact in a civil proceeding, not a criminal proceeding. Moreover, the Defendant's due process rights entitle him to an opportunity to present defenses as to his liability.

II. DOES MICROL HAVE STANDING?

It is well-settled that persons who are not parties of record to a suit have no standing in it that will enable them to take part in or control the proceedings.^{8/} Sablan v. Iginoeff, No. 89-008, slip op. at 13-14 (N.M.I. June 7, 1990); see also 59 Am Jur 2d, Parties, Section 124; 13 C. Wright, A. Miller and E.

^{7/} By way of example, had the Defendant in the instant case been convicted of Theft of a Vehicle (9 CMC §702) or Tampering with a Vehicle (9 CMC §7103), proximate cause would have been established.

^{8/} Corn. R. Crim Pro 35 (allowing motions for correction or reduction of sentences) and its counterpart, Fed. R. Crim. Pro. 35 as well as motions brought in federal court pursuant to §2255 of Title 28, U.S.C. (Remedies on Motions Attacking Sentence) contemplate the sort of motion Microl has before the Court. However, in each instance, the only person eligible to employ these procedures is the person who was convicted and sentenced.

Cooper, Federal Practice and Procedure, Sections 3531 et seq. (1984). If they have the occasion to ask relief in relation to the matters involved, they must obtain the status of parties or institute an independent suit. 59 Am Jur 2d, Parties, Section 124.

Pursuant to Article III, Section 11 of the CNMI Constitution, the Attorney General has the sole responsibility for prosecuting violations of commonwealth law. When the duty of taking appropriate action for the enforcement of a statute is entrusted solely to a named public officer, private citizens ordinarily cannot intrude upon that officer's functions. 59 An Jur 2d, Parties, Section 33.

To grant Microl standing in this matter would have the effect of allowing persons whose claims are essentially civil in nature to re-open previously disposed of criminal matters and jeopardize the efficient administration of criminal justice in the Commonwealth. One example of this scenario in the instant case would be if all of those CUC customers who were without electricity as a result of the damage done to the power pole filed motions such as Microl's. Were the Court to grant these people standing to come in and assert restitution rights as "crime victims," this criminal proceeding would be subject to unending litigation.

While the Court concludes that Microl has no standing in the instant action, it may obtain relief in the form of a civil action against the Defendant.^{9/}

^{9/} In fact, Microl has already filed a civil suit for damages to its vehicle against the Defendant. See, Microl v. Jung Yeong Min, Commonwealth Superior Court Civil Action No. 90-621.

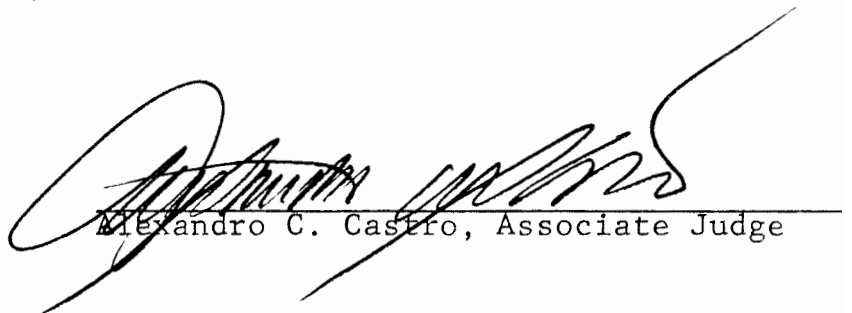
III. WAS THE DEFENDANT'S SENTENCE ILLEGAL?

As the previous section of this Decision makes clear, Microl has no standing to contest the legality of the Defendant's sentence. However, the Court on its own motion now considers whether the sentence of the Defendant is illegal. Since it was determined in Section 1 of this Decision that Microl was not a proper victim of crime for Article I, Section 11 purposes, the failure of the Court to include restitution to Microl does not render the sentence illegal. However, the Court sees no difference in the positions of Microl and CUC and the appropriateness of restitution under Article I, Section 11 of the CNMI Constitution. Therefore, that portion of the Court's sentence ordering the Defendant to pay restitution to CUC is stricken.

Now therefore, IT IS ORDERED:

1. The motion of Microl is hereby STRICKEN; and
2. On its own motion, the Court hereby STRIKES that portion of the Defendant's sentence ordering him to pay restitution to CUC.

Entered this 31 day of July, 1990.


Alejandro C. Castro, Associate Judge