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| | IN THE SUPERIOR COURT FOR THE |
| 8 | COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS |
| 9 10 | COMMONWEALTH OF THE NORTHERN) TRAFFIC CASE No. 93-1284 MARIANA ISLANDS, |
| 11 | Plaintiff, |
| 12 | vs. |
| 13 |)ORDER DENYING RELEASEFRANCISCO H. RAMANGMOU)PENDING APPEAL |
| 14 | Defendant. |
| 15 | / |
| 16 | On September 18, 1993, in Saipan, Commonwealth of the |
| 17 | Northern Mariana Islands, the Defendant, Francisco H. Ramangmou |
| 18 | was convicted by a jury of vehicular homicide, in violation of 9 |
| 19 | CMC §7110(a). ^{1/} Mr. Ramangmou was the driver of a vehicle that |
| 20 | struck and killed bicycle rider Sidney Quan on April 18, 1993. On |
| 21 | October 28, 1993, Defendant received and began to serve a ten year |
| 22 | prison sentence. Defendant has filed an appeal from the Judgment |
| 23 | and Probation/Commitment Order and now has filed a motion for his |
| 24 | release pending the appeal. |
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| 26 | FOR PUBLICATION |
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| | ¹ / In addition, the Court found the Defendant guilty of reckless driving in violation of 9 CMC §7104(a). |

| 1 | A. STANDARD FOR STAY PENDING APPEAL |
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| 2 | A convicted defendant has no absolute right to bail and the |
| 3 | question of his release on bail pending appeal rests in the sound |
| 4 | discretion of the trial court. U.S. v. Quicksey, 371 F.Supp. 561 |
| 5 | (D.C.W.Va. 1974). Rule 46(c) of the Commonwealth Rules of |
| 6 | Criminal Procedure directs the Superior Court to determine the |
| 7 | release of a defendant awaiting appeal from a conviction under the |
| 8 | same conditions as a defendant seeking pre-trial release and bail, |
| 9 | <u>unless</u> : |
| 10 | the Court has reason to believe that no one or more conditions of release will reasonably assure that the |
| 11 | person will not flee or pose a danger to any other person or to the community. If such a risk of flight or |
| 12 | danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may |
| 13 | be ordered detained. |
| 14 | Com. R. Crim. P. 46(c) (emphasis added). |
| 15 | This language manifests a presumption in favor of release |
| 16 | pending appeal that can be overcome only if the court "has reason |
| 17 | to believe" one of the four grounds for detainment (risk of |
| 18 | flight, danger, frivolity of appeal, appeal for purpose of delay) |
| 19 | exists. In the case at bar, the prosecution has conceded that at |
| 20 | least one of defendants claims on appeal is not wholly frivolous. |
| 21 | Government's Response to Defendant's Motion for Stay of Sentence |
| 22 | Pending Appeal, at 6. While the Court agrees that Defendant's |
| 23 | appeal has some substance and is not taken for purposes of delay, |
| 24 | the circumstances surrounding Defendant's conviction have given |
| 25 | this Court reason to believe the Defendant is a flight risk and |
| 26 | represents a danger to certain individuals within the community. |
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| 1 | B. RISK OF FLIGHT |
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| 2 | The Defendant faces a ten year jail sentence. Defendant has |
| 3 | argued that he would be foolish to flee this jurisdiction because |
| 4 | of the many remaining legal battles which may lead to an early |
| 5 | release if not a complete acquittal of the Defendant. The Court |
| 6 | does not find this argument persuasive. Although Counsel for |
| 7 | Defense portrays the jury's decision convicting Defendant as a pit |
| 8 | stop on the road to Defendant's freedom, the reality is that |
| 9 | Defendant faces an uncertain future with respect to the ultimate |
| 10 | outcome of this case. Flight to another jurisdiction would rid |
| 11 | the Defendant of such uncertainty. |
| 12 | The Defendant also argued that his current unemployment would |
| 13 | decrease any risk of flight because of his economic difficulty. |

The Court is more persuaded by the prosecution's argument that the Defendant's unemployed status eliminates any incentive for him and his family to remain in Saipan to await the results of his appeal from the judgment against him.

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C. DANGER TO OTHER PERSON OR TO THE COMMUNITY

In C.N.M.I. v. Esteves, No. 92-003 (N.M.I. Apr. 23, 1992), 20 21 the defendant filed a motion for release pending appeal from his 22 conviction for assault with a dangerous weapon. Id. As part of 23 the explanation for the denial of the motion, the Supreme Court 24 considered the fact that the defendant was appealing his 25 conviction for a "serious felony offense". Id. According to the 26 Supreme Court, this heightened defendant's burden of showing that 27 he would not pose a danger to the community if he were released pending his appeal. Id. Similarly, in the case at bar, 28 the

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Defendant's vehicular homicide conviction is a felony offense,^{2/}
and constitutes evidence which this Court may consider when
applying Rule 46(c) to the particular circumstances of this case.

The Defendant argues that any potential danger the Defendant may pose to the community can be neutralized through the suspension of his driving privileges. While the Court recognizes that the revocation of the Defendant's driver's license may lessen the potential danger, the Court does not believe anything less than continued incarceration would effectively deny the Defendant access to any motor vehicle.

In addition, this Court is convinced that he poses an additional danger to the community. On November 24, 1993, Cheryl Gill, the Assistant Attorney General who prosecuted this case, testified during the hearing of the Defendant's motion for release pending appeal.

16 This Court believes Ms. Gill to be a very credible witness. 17 Ms. Gill's testimony centered on three separate encounters with the Defendant during the course of the jury trial and presentence 18 19 hearing. First, during the course of the trial, the Defendant 20 approached Ms. Gill in the courtroom and told her: "You are not 21 going to get me". Ms. Gill informed Counsel for Defense, Mr. 22 Theodore Christopher, about the incident and asked him to warn 23 Mr. Ramamgmou against speaking to the prosecution. Subsequently, 24 the jury found the Defendant quilty of vehicular homicide and 25 reckless driving.

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^{28 &}lt;sup>2</sup>/₂ The crime of vehicular homicide arises to the level of felony because it is punishable by more than one year. See 9 CMC §7110 ("not less than 90 days nor more than 10 years").

1 The second incident occurred after trial and before the 2 sentencing hearing at the Marianas Resort swimming pool. The 3 Defendant approached Ms. Gill and her eleven month old daughter. After confirming that the child was Ms. Gill's daughter, the 4 Defendant asked Ms. Gill, "Do you want me to take [your daughter] 5 Ms. Gill testified that she found the Defendant's 6 swimming"? 7 actions threatening and feared for her family's safety due to the 8 fact that the Defendant now knew her daughter by face. During his 9 third and final opportunity to confront Ms. Gill on the date of 10 the sentencing hearing, Defendant extended an obscene gesture to 11 Ms. Gill during her argument to the Court concerning the length of 12 Defendant's sentence. In light of the taunting words used by the Defendant in his first incident with Ms. Gill and his subsequent 13 14 conviction, the Court finds that Defendant's words in the second 15 incident arise to the level of.a threat of bodily harm against Ms. 16 Gill and her family.

The Court considers the Defendant's actions a clear sign that he poses a danger to Ms. Gill and her family. In addition, the Defendant's conduct suggests that he may be dangerous other persons in the community.

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D. CONCLUSION

Although the language of Rule 46(c) favors the release of a defendant pending appeal, the language also gives a trial court the responsibility of denying the release if it believes a risk of flight or danger exists. This Court finds that the Defendant

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represents a flight risk and a danger to the community, and therefore, his motion for release pending appeal is denied. day of December, 1993. So ORDERED this ALEYANDRO C. CASTRO, Presiding Judge