

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

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 JUDGE

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,	)	Criminal Case No. 91-146
	)	
Plaintiff,	)	
	)	
v.	)	<b>DECISION AND ORDER ON</b>
	)	<b>REVOCATION OF PROBATION</b>
JAMESON HEMLEY,	)	
	)	
Defendant.	)	
_____	)	

This matter came before the Court on November 29, 1994, on the Government's motion to revoke Defendant's probation for failure to perform the conditions thereof. Defendant claims that the Court lost jurisdiction over him when his period of probation expired.

**I. FACTS**

On October 22, 1991, Defendant plead guilty to one count of robbery in violation of 6 CMC § 1411 pursuant to a negotiated plea agreement. The Court approved the agreement and suspended imposition of sentence for three years pursuant to 6 CMC § 4113. The Court required the Defendant to satisfy the following conditions of probation: (1) Defendant shall pay restitution in

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1 the amount of \$250.00; (2) Defendant shall perform 240 hours of  
2 community work service under the direction of the Probation  
3 Office; and (3) Defendant shall obey all laws of the CNMI.  
4 *Judgment and Probation/Commitment Order* (Oct. 22, 1991). During  
5 most of the three year period following the Court's imposition of  
6 probation, the Defendant did not pay any portion of the  
7 restitution fee or perform any community service work.

8 On October 17, 1994, five days prior to the termination of  
9 his probationary period, the Defendant paid \$200.00 of the \$250.00  
10 restitution fee, and on that same day the Government filed a  
11 motion to revoke suspended sentence. The probationary period  
12 ended on October 22, 1994. Two days later, the Defendant paid the  
13 remaining \$50.00 of the restitution fee. The Defendant never  
14 completed any community service work. The Court scheduled a  
15 revocation hearing on this matter for November 3, 1994.

16 On October 31, 1994, the Defendant filed a motion to dismiss  
17 the revocation proceedings for lack of jurisdiction. Based on 6  
18 CMC § 4113(d), the Defendant claims the Court lost its ability to  
19 revoke his suspended sentence on the day the Defendant's  
20 probationary period ended. The Government contends that the  
21 Courts jurisdiction over the Defendant continues for a reasonable  
22 time after the probationary period as long as revocation  
23 proceedings commence prior to the end of the probationary period.

## 24 25 **II. ISSUE**

26 Whether this Court lacks jurisdiction to revoke the  
27 Defendant's suspended sentence once the probationary period has  
28

1 ended if the Government initiated revocation proceedings prior to  
2 the end of Defendant's probationary period.

3  
4 **III. ANALYSIS**

5 Title Six, Section 4113(d) of the Commonwealth Code provides  
6 in pertinent part: "[i]f the Court has not revoked the order of  
7 probation and pronounced sentence, the defendant shall, at the end  
8 of the term of probation, be discharged by the court." 6 CMC §  
9 4113(d). The Defendant contends that the plain language of this  
10 statute relieves the Court of its jurisdiction over a defendant if  
11 it fails to complete revocation proceedings prior to the end of  
12 the defendant's probationary period. Despite the limitations such  
13 an interpretation places on the Government's ability to exercise  
14 control over probationed convicts, the Court agrees with the  
15 Defendant that the statute expressly calls for discharge at the  
16 end of the probationary period.

17 Defendant cites *Keller v. Superior Court*, 524 P.2d 956, 958  
18 (Ariz.App. 1974) which faced circumstances identical to those  
19 here. Based on the plain language of an Arizona statute similar  
20 to the probation revocation language in Section 4113(d),<sup>1/</sup> *Keller*

21  
22 <sup>1/</sup> The *Keller* decision supplied the following pertinent  
subsections of the Arizona probation statute:

23 B. At any time *during the probationary term* of the person  
24 released on probation, . . . the court may . . . revoke and  
terminate the probation. . . . \* \* \* \*

25 D. The court may at any time *during the period of probation*  
26 revoke or modify its order of suspension of imposition or  
27 execution of sentence. . . . [I]f the court has not seen fit  
28 *to revoke the order of probation and impose sentence or*  
*pronounce sentence, the defendant shall, at the end of the*  
*term of probation, be discharged by the court.*

(continued...)

1 limited the trial court's jurisdiction to revoke probation to the  
2 period prior to the expiration of the probation period.

3 The Government responds by citing *State v. Jensen*, 378 N.W.  
4 710 (Iowa 1985), which avoided the harsh results of the plain  
5 terms of an Iowa revocation statute, focusing instead on the  
6 claimed intent of the Iowa Legislature and on related statutes.  
7 The Jensen court bolstered its interpretation through a review of  
8 the cases in other jurisdictions, a majority of which allow the  
9 state to initiate revocation proceedings, but do not require their  
10 termination, prior to the expiration of probation. *Id.* at 712.

11 In reviewing these competing authorities, the Court considers  
12 the Jensen opinion to be an (albeit well-intentioned) exercise in  
13 judicial legislation. Here, there is no evidence before the Court  
14 of the legislative intent behind 6 CMC § 4113. Neither is there  
15 a surrounding statutory context which will allow the Court to  
16 infer that continuing jurisdiction past the expiration of the  
17 probationary period is intended. Moreover, the Court cannot  
18 construe a statute against its plain meaning. *Office of Attorney*  
19 *General v. Deal*, 3 N.M.I. 110, 117 (1992).

20 The Court does not condone the failure of Mr. Hemley to  
21 complete his community work service. Nor would the Court have  
22 chosen the wording of Section 4113(d), which arguably renders the  
23 Government powerless to enforce the terms of a convicted  
24 criminal's probation if he or she chooses to violate its terms  
25 during the closing days. Nevertheless, it is not the Court's

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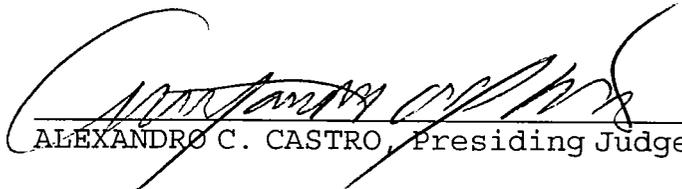
26  
27 <sup>1/</sup>(...continued)  
A.R.S. § 13-1657 (emphasis added).

1 function to alter a clear mandate of the legislature. Therefore,  
2 this Court holds that, pursuant to Section 4113(d), a motion for  
3 revocation of probation must be filed and a hearing must take  
4 place prior to the expiration of the probationary period. Thus,  
5 in the present matter, this Court no longer has the jurisdiction  
6 to compel Mr. Hemley to do that which he pledged to do.

7  
8 **IV. CONCLUSION**

9 For the foregoing reasons, the Government's motion to revoke  
10 Defendant's probation is hereby DENIED.

11  
12 So ORDERED this 22 day of December, 1994.

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15 ALEXANDRO C. CASTRO, Presiding Judge  
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