

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

COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS

Plaintiff,

vs.

GINA J.C. SABLAN

Defendant.

CRIMINAL ACTION NO. 99-188D

**DECISION AND ORDER
GRANTING DEFENDANT'S
MOTION TO DISMISS**

I. INTRODUCTION

This matter came before the court on October 19, 1999, on Defendant's motion to dismiss the Commonwealth's information charging her with criminal contempt. Nicole C. Forelli from the Office of the Attorney General appeared on behalf of the Commonwealth of the Northern Mariana Islands ("Commonwealth"). Wesley M. Bogdan of the Office of the Public Defender appeared on behalf of Gina J.C. Sablan ("Defendant"). After hearing the arguments of counsel and reviewing all the evidence presented, the court now renders its written decision. [p. 2]

II. FACTUAL BACKGROUND

On November 23, 1998, Defendant pled guilty to disturbing the peace in Criminal Case No. 98-318. She was sentenced to six months imprisonment, all suspended under the following conditions:

- a. Defendant shall be placed on probation under the direction and supervision of the Office of Probation.
- b. Defendant shall write an apology letter to Stacey Santos for her action in this matter within seven days from the sentencing and submit a copy to the Office of Probation.
- c. Defendant shall perform 75 hours of community work service within five months

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under the direction and supervision of the Office of Probation, with a minimum of fifteen hours to be performed per month.

d. Defendant shall obey all criminal laws of the Commonwealth and the United States except minor traffic offenses.

The Judgment and Order in that case also provided that Defendant's failure to perform any of the conditions set forth in paragraphs b, c, and d would constitute a violation of the terms and conditions of the suspended sentence and shall subject Defendant to probation revocation (Def. Mem. Supp. Mot. to Dismiss Ex. A at 2).

On April 9, 1999, the Office of Probation filed with the Office of the Attorney General ("AGO") an affidavit entitled "in support of government's motion to revoke probation/suspended sentence" informing the AGO that Defendant had only performed five hours of community work service. Defendant failed to complete the 75 hours of community service work within the five month period specified in the Judgment and Order¹. On May [p. 3] 10, 1999, the Commonwealth filed an information charging Defendant with Criminal Contempt, in violation of 6 CMC § 3307, for not completing the required community service work hours specified in the Judgment and Order in Criminal Case No. 98-318B.

III. ISSUE

May the government file an information charging criminal contempt under 6 CMC § 3307 against a person for failing to comply with a condition of her suspended sentence?

IV. ANALYSIS

Under 6 CMC § 3307, a person "who resists or refuses or fails to comply with a lawful order of the court" may be charged with criminal contempt and upon conviction may be imprisoned for not more than six months, or fined not more than \$100, or both.

Title 6, Division 4, Chapter 1 of the Commonwealth Code, however, specifically governs the sentencing of offenders and the consequences of failing to comply with a sentencing order. In particular, Section 4105 of Title 6, entitled Suspension of Execution of Sentence, states in relevant

¹ Defendant completed the required 75 hours of community service after her period of probation ended (Def. Mem. Supp. Mot. to Dismiss at 4).

part:

“[T]he court may suspend or modify all or part of a sentence and order probation or other sentencing where that action is deemed to be in the best interests of justice, and may reimpose all or part of the suspended sentence upon violation of the terms of the suspension.”

Id.

In the instant case, Defendant was sentenced to six months imprisonment, all suspended and placed on probation. Her suspended sentence places her directly within the ambit of 6 CMC § 4105. According to 6 CMC § 4105, a violation of the terms of the suspension may result in the reimposition of all or part of the suspended sentence. Because Defendant violated a condition of her suspended [p. 4] sentence, she is subject to the punishment specifically provided under 6 CMC § 4105.² The text of the statute plainly states that the court may reimpose all or part of the suspended sentence if a person violates a term of his suspended sentence. Commonwealth case law dictates that if the meaning of a statute is clear, the court will not construe it contrary to its plain meaning. *Office of Attorney General v. Deala*, 3 NMI 110, 117 (1992). Section 4105, Title 6 of the Code is devoid of any language authorizing the use of criminal contempt, as an additional sanction for any violation of the terms and condition of a suspended sentence. Therefore the information filed against Defendant for violating a condition of her suspended sentence is improper.

V. CONCLUSION

Based on the foregoing reasons, Defendant’s motion to dismiss with prejudice is hereby **GRANTED**.

SO ORDERED this NOV 30 1999.

/s/ John A. Manglona
JOHN A. MANGLONA, Associate Judge

² The Office of Attorney General knew that Defendant had not performed the required 75 hours of community work service, a condition of her suspended sentence, but chose not to initiate action under 6 CMC § 4105 (*See Comm. Opp. Mot. to Dismiss Ex. A*).