

**FOR PUBLICATION**

**Appeal No. 01-021**

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

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**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,**  
Plaintiff/Appellee,

v.

**BENDER S. CASTRO,**  
Defendant/Appellant.

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**OPINION**

**Cite as: *Commonwealth v. Castro*, 2002 MP 13**

Traffic Case No. 99-4831

Hearing held March 21, 2002

Decided July 19, 2002

For the Commonwealth of the  
Northern Mariana Islands  
Plaintiff/Appellee:

Kevin Lynch, Esq.  
Office of the Attorney General  
Civic Center Complex  
Susupe, Saipan, MP 96950

For Bender S. Castro  
Defendant/Appellant:

Sean Elameto, Esq.  
Office of the Public Defender  
P.O. Box 10007  
Saipan, MP 96950

BEFORE: Miguel S. DEMAPAN, Chief Justice, Alexandro C. CASTRO, Associate Justice, John A. MANGLONA, Associate Justice.

MANGLONA, Associate Justice:

¶1 Appellant Bender S. Castro [hereinafter Defendant or Castro] appeals a Judgment and Commitment Order entered on July 19, 2001, imposing a sentence in a traffic case more severe than agreed upon between Castro and the Office of the Attorney General.<sup>1</sup> We have jurisdiction pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands and 1 CMC § 3102(a). We vacate the order and remand with instructions.

### ISSUES PRESENTED AND STANDARD OF REVIEW

¶2 The issue presented is whether the trial court erred when it rejected a plea agreement and failed to allow the Defendant to withdraw his guilty plea, made pursuant to Rules 11(e)(1)(A) and 11(e)(1)(C) of the Commonwealth Rules of Criminal Procedure, prior to imposing a sentence. This is a question of law which we review *de novo*. See *Commonwealth v. Ping*, App. No. 97-053 (N.M.I. Sup. Ct. July 26, 1999) (Opinion at ¶2) (*citing Agulto v. Northern Marianas Inv. Group, Ltd.*, 4 N.M.I. 7, 9 (1993)).

### FACTUAL AND PROCEDURAL BACKGROUND

¶3 Sometime in 1999, Castro was cited for allegedly violating 9 CMC § 2201(a) (driving without a license), 9 CMC § 4101(d) (vehicle lights infraction) and 9 CMC § 4104(a) (equipment violation – brakes). On December 30, 1999, Castro entered a plea of not guilty to the charges. Castro failed to appear at his scheduled status conference, and the court issued a bench warrant for his arrest.

¶4 Castro was subsequently arrested on other charges.<sup>2</sup> The court quashed the bench warrant. A change of plea hearing took place on July 19, 2001, to dispose of the 1999 (alleged) traffic

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<sup>1</sup> There is an overt inconsistency in the July 19, 2001 Order. It indicates that Castro entered a plea of guilty to “No Driver’s License, 9 CMC § 2201(a),” but the court adjudged him guilty of “Reckless Driving, 9 CMC § 7104.” Excerpts of Record at 26.

<sup>2</sup> These charges are not before us and have no bearing on this case.

infractions. At this hearing, the government informed the trial court that “this matter is simply going to be a plea to the [§] 2201(a) charge, with a dismissal of the remaining charges.” Excerpts of Record [hereinafter E.R.] at 17. Castro then pled guilty to the § 2201(a) charge. *Id.*

¶5 In response to the court’s inquiry as to the recommended disposition, the Attorney General’s Office stated the recommended disposition as “just a hundred dollar fine, Your Honor.”

¶6 Whereupon the following immediately transpired:

THE COURT: I’m going to sentence you, do you have any license?  
CASTRO: No.  
THE COURT: When was the last time you had a license?  
CASTRO: I never had.  
THE COURT: Never had. I’m going to sentence you to six days in jail, all suspended except three days. And I’m going to put you on probation for a period of six months. The fine is one hundred dollars. Do you agree with that?  
CASTRO: Yes, Your Honor.  
THE COURT: All right. You are going to jail because, you know, you’ve been here before, right, and you never had your license, right? When are you going to get your license?

E.R. at 18.

¶7 Castro’s attorney then attempted to withdraw Castro’s plea. The court did not accept the withdrawal of the plea, and ordered Castro incarcerated. Castro’s attorney then objected to the imposition of sentence, and asked that the case be transferred to another court. The court denied Castro’s motion.<sup>3</sup>

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<sup>3</sup> The following exchange between Castro’s counsel and the court took place:

[COUNSEL]: Just a moment, Judge. May I just have a moment with my client?  
THE COURT: Yes.  
[COUNSEL]: I don’t think he fully understands here. Judge, I would ask. Mr. Castro is gonna withdraw his plea at this time.  
THE COURT: I’m not going to accept that right now. The plea will not be accepted, I mean the withdrawal will not be accepted. What’s the basis, Mr. Rhodes?  
[COUNSEL]: This was not, Mr. Castro is being represented by Ms. Cabrera on this matter. I’m filling in on her behalf. This was not the, this was not the disposition that he was, that he originally agreed to, and after conferring with him and after asking him whether he fully understood what the court was sentencing him to, he has indicated that he would like to withdraw his plea at this time.  
THE COURT: All right. The-  
[COUNSEL]: Judge, also at this time, certain admissions have been made by my client that I believe are detrimental to this case proceeding it toward trial and I would ask to have this case transferred to another court.  
THE COURT: Motion denied and the defendant will be incarcerated as of right now. I’m going to put you in jail today.

E.R. at 18 lines 10-28.

¶8 The next day, Castro and the Attorney General’s Office entered a Stipulated Motion for Stay of Execution. E.R. at 28. The motion, signed by both Castro’s counsel and the Attorney General’s Office, detailed the events of the preceding day’s change of plea hearing. The court granted the Stay of Execution of Sentence in an Order dated July 20, 2001.<sup>4</sup>

¶9 Castro timely filed this appeal on July 25, 2001.

### ANALYSIS

¶10 Castro advances three arguments in support of his contention that he should have been allowed to change his plea, citing Commonwealth Rule of Criminal Procedure 11, *Commonwealth v. Ping*, App. No. 97-053 (N.M.I. Sup. Ct. July 26, 1999) (Opinion) and public policy concerns.<sup>5</sup>

¶11 Castro argues that he entered his plea of guilty to the violation of driving without a license, with the understanding that the remaining charges would be dismissed, thereby bringing his plea agreement under the purview of Commonwealth Rule of Criminal Procedure 11(e)(1)(A). Castro also argues that the Assistant Attorney General recommended a punishment of a \$100 fine, thereby bringing the arrangement under the purview of Rule 11(e)(1)(C). It is Castro’s contention that, since this is a Rule 11(e)(1)(A) and 11(e)(1)(C) situation, Rule 11(e)(4) should have been followed. As such, the court should have informed Castro of its intention to reject the agreement and afforded Castro the opportunity to withdraw his plea. Castro contends, and the record before us shows, neither occurred.

¶12 Castro’s next argument is that *Commonwealth v. Ping*, App. No. 97-053 (N.M.I. Sup. Ct. July 26, 1999) (Opinion at ¶9) (which states “[i]f the court rejects the agreement, the court must so inform the parties, advise the defendant that the court is not bound by the plea agreement, and afford the defendant the opportunity to withdraw his plea”) is controlling in this situation.

¶13 Finally, Castro contends that public policy considerations dictate that the trial court should

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<sup>4</sup> Judge Juan T. Lizama, the sentencing judge, was off-island on court business. See E.R. at n.1. The motion to stay was then heard and decided by Judge Timothy H. Bellas.

<sup>5</sup> The Office of the Attorney General did not object to the relief sought by Castro. See Declaration of Stephen P. Wadsworth Regarding Appeal (December 11, 2001).

have allowed him to withdraw his plea. He argues that the interests of judicial expediency and preservation of the plea bargain process necessitate the continued enforcement of the procedures that the legislature has deemed appropriate. For this proposition, Castro cites *United States v. Selmer*.<sup>6</sup>

**1. The Rules of Traffic and Criminal Procedure Apply.**

¶14 The Commonwealth has promulgated rules which govern the proceedings in traffic cases for the trial court. *See generally*, Com. R. Traf. P. These rules “govern the procedure in the Commonwealth Superior Court to hear and determine cases involving traffic offenses.” Com. R. Traf. P. 1. A “traffic offense” is “any violation of a statute, ordinance or regulation relating to the operation or use of motor vehicles and any violation of a statute, ordinance or regulation relating to the use of streets and highways by pedestrians or by the operation of any other vehicle.” Com. R. Traf. P. 2(1). The Commonwealth Rules of Traffic Procedure certainly are applicable to this case.

¶15 Rule 8 delineates the procedure the trial court must follow when accepting a plea of guilty. Specifically, Commonwealth Rule of Traffic Procedure 8(a) states, in pertinent part:

Rights of Defendant. Before accepting a plea of guilty to a traffic offense other than parking, standing, or non-moving, the court shall inform the defendant of his rights, which shall include, but not be limited to, the right:

- (1) to engage counsel;
- (2) to a reasonable continuance to engage counsel;
- (3) to have process issued by the court, without expense to him, to compel the attendance of witnesses in his behalf;
- (4) to testify or not to testify in his own behalf;
- (5) to a trial by jury, if such is available; and
- (6) to appeal.

Com. R. Traf. P. 8(a). There is no mention of any right to withdraw a plea if the court declines to accept it.

¶16 The Commonwealth has also promulgated Rules of Criminal Procedure. *See generally*, Com. R. Crim. P. Commonwealth Rule of Criminal Procedure 1 states, “[t]hese rules govern the proce[dure] in all criminal proceedings in the Commonwealth Superior Court.” Thus, for the requirements of Commonwealth Rule of Criminal Procedure 11 (e)(4) to apply to Castro’s situation,

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<sup>6</sup> 883 F.2d 832, 835 (9th Cir. 1989) (“Congress in enacting Rule 11(e)(3) intended to protect prosecutors’ bargains . . .”).

Castro must have been involved in a “criminal proceeding.”

¶17

While it is true that Castro was charged with violating 9 CMC §§ 4101(d) and 4104(a), which are infractions, Castro was also charged with a violation of 9 CMC § 2201(a). Section 2201(d) of Title 9 of the Commonwealth Code states that a violation of 9 CMC § 2201(a) “shall be punishable as a misdemeanor.”<sup>7</sup> As such, a violation of 9 CMC § 2201(a) is a crime, and not a mere infraction; the rules of criminal procedure apply to Castro’s situation.

¶18

The rules of criminal procedure specifically state the duties of a judge when considering whether to accept a defendant’s plea. Commonwealth Rule of Criminal Procedure 11 (e) states, in pertinent part:

(e) Plea Agreement Procedure.

(1) In General. The attorney for the government and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the attorney for the government will do any of the following:

(A) move for dismissal of other charges; or

.....

(C) agree that a specific sentence is the appropriate disposition of the case.

.....

(4) Rejection of a Plea Agreement. If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the defendant personally in open court, or on a showing of good cause, in camera, that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw his plea, and advise the defendant that if he/she persists in his/her guilty plea or plea of nolo contendere the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

¶19

While two distinct rules of procedure apply to this situation, there is no conflict. The rules of traffic procedure are not, and were not intended to be, the sole authority in traffic-related cases. This is evidenced by Com. R. Traf. P. 2, which reads, in pertinent part: “[o]ther rules and laws which govern criminal procedure shall, insofar as they are applicable, implement the rules prescribed by these Rules.” Thus, the rules of traffic procedure exist to supplement other applicable rules; when

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<sup>7</sup> “Misdemeanor” is defined by the Commonwealth Criminal Code as “any offense or conduct proscribed by Commonwealth law which is punishable by not more than one year confinement in a jail or prison.” 6 CMC § 102(s).

applying the applicable rules of criminal procedure to this case, the rules of traffic procedure must also be followed.<sup>8</sup>

**2. Commonwealth Rule of Criminal Procedure 11 (e) Requires That Castro be Allowed to Withdraw His Plea of Guilty.**

¶20 We have had occasion to address Rule 11(e). The issue in *Commonwealth v. Ping*, App. No. 97-053 (N.M.I. Sup. Ct. July 26, 1999) (Opinion) was whether the trial court erred when it imposed a sentence less severe than that contained in the parties’ written plea agreement entered into pursuant to Rule 11(e)(1)(C). In *Ping*, the prosecution and defense had agreed to a plea of 20 years’ imprisonment, all stayed except for 6 years, with credit for time served. The court, taking pity on the defendant’s baby (defendant had given birth to a child in prison, and the child spent its first year in prison), reduced the sentence to ten years’ imprisonment, all suspended except for the first three. The prosecution objected to this deviation from the plea bargain.

¶21 After exploring and discussing relevant federal case law,<sup>9</sup> we reversed the trial court and stated, “[t]hus, the plain language of Rule 11 makes it clear that when the court is presented with an (e)(1)(A) or (C) plea agreement, the court may only accept or reject the agreement in its entirety.” *Id.* at ¶9. Furthermore, “the court’s only options were to accept the plea agreement in its entirety or reject it and allow the parties an opportunity to renegotiate the sentence.” *Id.* at ¶13.

¶22 Although *Ping* is factually distinguishable from the instant case in that *Ping* involved a written plea agreement that specifically cited Com. R. Crim. P. 11(e)(1)(C) and a downward departure from the plea bargain, these are distinctions without a difference. Rule 11 requires neither a written agreement nor that the court be specifically informed under which section the parties wish to proceed with the plea.<sup>10</sup> The fact that the instant case contains an upward departure from the plea

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<sup>8</sup> From the record before us, it does not appear that the trial court followed Com. R. Traf. P. 8 when sentencing Castro. Nowhere did the court mention Castro had a right to appeal, and no mention was made that a record of the conviction would be sent to the CNMI Bureau of Motor Vehicles. Neither party addressed this issue; neither shall we.

<sup>9</sup> When we interpret Commonwealth procedural rules, it is appropriate to consult the interpretation of counterpart federal rules. *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270, 283 n.14 (1991).

<sup>10</sup> There is nothing in the rules that prohibits the parties from presenting the plea agreement to the court in writing. We note that, absent a plea agreement arrived at “at the courthouse door” that makes a written agreement difficult to procure, it is in the parties’ best interests to present the court with a written agreement so that there can be no misunderstandings. In this case, the record before us reflects that the trial court was informed that the plea

agreement is insignificant. In *Ping* we relied on *United States v. Fernandez*, which stated, “[w]hen a plea agreement is made pursuant to Fed. R. Crim. P. 11(e)(1)(C), the trial court may accept or reject the agreement, but absent exceptional circumstances, it may not accept the defendant’s guilty plea and impose a sentence greater, or less severe, than agreed upon.” *Ping*, App. No. 97-053 (Opinion at ¶10) (citing *United States v. Fernandez*, 960 F.2d 771, 773 (9th Cir. 1992)) (citations and emphasis omitted). Nothing has convinced us that the logic of *Fernandez* is no longer sound.

¶23 It bears noting that an agreement regarding the disposition of a case reached between the parties is not sacrosanct. Our rules of criminal procedure were promulgated to “provide for the just determination of every criminal proceeding[.]” Com. R. Crim. P. 2. The rules should be read “to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.” *Id.* Contrary to Castro’s assertion, the rules were not promulgated to “protect prosecutors’ bargains.”

¶24 The trial court retains authority and responsibility when presented with a sentencing agreement. The “court may accept or reject a guilty plea in the exercise of its sound discretion.” *United States v. Greener*, 979 F.2d 517, 519 (7th Cir. 1992) (citation omitted). “Judicial power to reject plea bargains serves to modify and condition the absolute power of the prosecutor, consistent with the doctrine of separation of powers, by establishing a check on the abuse of prosecutorial

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agreement called solely for a fine of one hundred dollars:

THE COURT: Mr. Castro, as to that purported violation, how do you plead?  
Guilty or not guilty?

CASTRO: Guilty.

THE COURT: All right. The recommended disposition?

ASSISTANT ATTORNEY GENERAL: *Just a hundred dollar fine*, Your Honor.  
E.R. at 18 (emphasis added).

However, in the emergency motion presented to Judge Bellas, both Castro’s counsel and Assistant Attorney General Lynch represented to the court the following:

3.) The plea agreement contemplated that defendant Bender S. Castro would enter a plea of guilty to a violation of 9 CMC § 2210(a) in exchange for the Commonwealth dismissing the other charges against the defendant. The parties further agreed that the defendant would be sentenced to a period of three (3) days in jail, all of which would be suspended for a period of six (6) months. The agreement further contemplated that defendant would be placed on probation for a period of six (6) months during which time he would pay a fine in the amount of One Hundred (\$100.00) Dollars and obey all laws of the Commonwealth of the Northern Mariana Islands and the United States of America.

4.) The court accepted the defendant’s plea of guilty. The court then inquired as to the agreement regarding sentence. *The court was informed of the agreed upon sentence as set forth above.*  
E.R. AT 29 (emphasis added).

We fail to see how informing the court that a plea is for “just a one hundred dollar fine” is also informing the court of the myriad of terms and conditions listed in the emergency motion. These misunderstandings have a tendency to lead to inquiries that often lead to the imposition of sanctions.

(executive) prerogatives.” *Sandy v. Fifth Judicial Dist. Court*, 935 P.2d 1148, 1150-51 (Nev. 1997). “Because plea agreements may not invade ‘the traditionally judicial function of what penalty to impose,’ judges are given power to reject plea bargains which invade this authority.” *Id.* At 1151. Thus, a judge must reject any plea agreement he feels is unjust.

¶25

It is clear that the court below rejected the parties’ plea agreement. In so doing, it was then bound by Commonwealth Rule of Criminal Procedure 11(e)(4), which reads, in pertinent part: “[i]f the court rejects the plea agreement, the court shall, . . . afford the defendant the opportunity to then withdraw his plea.” Com. R. Crim. P. 11(e)(4). The court did not inform Castro that it was not bound by the plea agreement. Further, it did not inform Castro that, if he persisted in his guilty plea, the disposition of his case might be less favorable than what he had bargained for. Each omission violates Com. R. Crim. P. 11(e)(4).

### CONCLUSION

¶26

For the foregoing reasons, the Judgment and Commitment Order is vacated. We remand to the trial court for proceedings consistent with this Opinion.<sup>11</sup>

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<sup>11</sup> We note from the record that Castro’s counsel made a request to have this matter assigned to another judge, which request was instantly denied. Although Castro did not raise this issue on appeal, we strongly urge the court to reconsider Castro’s request, in view of the following troubling exchange between counsel and the court:

[COUNSEL]: Judge, Judge, Judge, at this time is, is--  
THE COURT: CNMI v. Joseph Sablan Diaz, Traffic Case 00-1761. The defendant will be remanded to the--  
[COUNSEL]: Judge I wish to--  
THE COURT: Custody of DOC, the Marshal--  
[COUNSEL]: make regarding CNMI v. Bender Castro  
THE COURT: Mr. Rhodes, you shut up and sit down.  
[COUNSEL]: I, I object to the sentence imposed by--  
THE COURT: I tell you shut up and sit down.  
[COUNSEL]: [T]he court at this time--  
THE COURT: If you’re not ready to come and plead and do the plea this afternoon for your client, then don’t, don’t speak on behalf of your client, period. As for Mr. Diaz . . . .

E.R. at 19 lines 18-28 and E.R. at 20 lines 1-2.

Taken out of context, this exchange is patently troublesome as the court displayed intemperate behavior towards counsel from the bench. Taken in context, the exchange becomes more egregious; but for this exchange, it is probable that the court’s error could have been corrected and the case could have been set for trial or continued for another change of plea hearing. The scarce judicial resources of the trial court would not have been stretched further by an emergency hearing, and an appeal would not have been necessary.

We agree with the sentiments expressed by the Assistant Attorney General, Appellee’s counsel, at oral arguments, when he stated: “I would be loathe to utter those words and to create that atmosphere in the courtroom, which is supposed to be where pause is taken to administer justice and not to demonstrate impatience and disregard for the legal process itself.”

SO ORDERED THIS 19TH DAY OF JULY, 2002.

/s/ Miguel S. Demapan  
MIGUEL S. DEMAPAN, CHIEF JUSTICE

/s/ Alexandro C. Castro  
ALEXANDRO C. CASTRO, ASSOCIATE JUSTICE

/s/ John A. Manglona  
JOHN A. MANGLONA, ASSOCIATE JUSTICE