

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.

**JIN FU LIN,**  
Defendant-Appellant.

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**SUPREME COURT NO. 05-0023-GA**  
SUPERIOR COURT NO. 04-0284C

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**Cite as: 2010 MP 2**

Decided February 23, 2010

John D. Osborn, Saipan, Northern Mariana Islands, for Appellant.  
Jeffery L. Warfield, Sr., Assistant Attorney General, Saipan, Northern Mariana Islands, for Appellee.  
BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; JESUS C.  
BORJA, Justice Pro Tem.

CASTRO, J.:

¶ 1 Defendant Jin Fu Lin appeals the trial court’s sentence for possession of a controlled substance under 6 CMC § 2142, arguing that the sentencing guidelines contained therein are unconstitutionally vague. Lin also asserts that the trial court misapplied the sentencing guidelines, and in doing so, violated his equal protection rights under Article 1, Section 6 of the Commonwealth Constitution. Contrary to Lin’s assertions, we find that § 2142(b) is not unconstitutional and that Lin was properly sentenced thereunder. Accordingly, we AFFIRM Lin’s sentence.

## I

### **Eligibility of Suspension, Parole or Probation**

¶ 2 On September 14, 2005, Lin pled guilty to possessing a controlled substance under 6 CMC § 2142(a).<sup>1</sup> Pursuant to § 2142(b), he was sentenced to four years imprisonment without suspension, parole or probation, with credit for time already served, and was ordered to pay a fine of \$2,000.00. Subsection 2142(b) states that “any person who violates subsection (a) of this section with respect to any controlled substance except marijuana shall be sentenced to a term of imprisonment of not more than five years not subject to suspension, parole or probation, and a fine of \$2,000.00.”

¶ 3 Lin argues that “the unavailability of a suspended sentence, parole or probation applies only when a term of imprisonment for five years is imposed.” Appellant’s Opening Br. at 8. When a defendant convicted under 6 CMC § 2142(a) is sentenced to less than the full five years, Lin argues that the defendant should actually be eligible for a suspended sentence, parole or probation. He essentially argues that the five-year mark is a threshold which, only when met, triggers the probationary restrictions. Whether the superior court correctly interpreted and applied a sentencing statute is a question of law and is reviewed de novo. *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 10 (citing *Commonwealth v. Abuy*, 2001 MP 8 ¶ 5; *Commonwealth v. Kaipat*, 2 NMI 322, 327-28 (1991)).

#### A. 6 CMC § 2141(b)

¶ 4 Lin contends that 6 CMC § 2142(b) is unconstitutionally vague when compared to 6 CMC § 2141(b). Subsection 2141(b)(1) states that a person convicted of trafficking in “methamphetamine hydrochloride shall be sentenced for a first offense to a term of imprisonment for not less than 25 years, a fine of not more than \$10,000, or both and the term of imprisonment shall not be subject to suspension, probation or parole. . . .” Lin argues that 6 CMC § 2142(b) is ambiguous because, unlike 6 CMC §

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<sup>1</sup> Under 6 CMC § 2142(a), it is “unlawful for any person knowingly or intentionally to possess a controlled substance, unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice. . . .”

2141(b), it does not explicitly and unequivocally state that “the term of imprisonment shall not be subject to suspension, probation or parole.” 6 CMC § 2141(b).

¶ 5 Provisions of the Commonwealth Criminal Code are to be construed according to the reasonable construction of their terms with a view to effect the plain meaning of their object. *Commonwealth v. Kaipat*, 4 NMI 300, 304 (1995) (citing 6 CMC § 104(d)). “The fact that congress might, without difficulty, have chosen ‘[c]learer and more precise language’ equally capable of achieving the end which it sought does not mean that the statute which it in fact drafted is unconstitutionally vague.” *United States v. Powell*, 423 U.S. 87, 94 (1975) (quoting *United States v. Petrillo*, 332 U.S. 1, 7 (1947)). A reasonable reading of 6 CMC § 2142(b) clearly precludes *any* sentence imposed thereunder from suspension, parole or probation. Lin’s argument is not supported by the statutory language; nothing in 6 CMC § 2142(b) qualifies the unavailability of suspension, parole or probation on the imposition of the maximum sentence of five years.

*B. 6 CMC § 2142(d)(1)*

¶ 6 Lin also contends that 6 CMC § 2142(b) is inconsistent with 6 CMC § 2142(d)(1), which he argues “does not by its specific wording make any jail time imposed thereunder not subject to suspension, parole or probation.” Appellant’s Opening Br. at 8. Subsection 2142(d)(1) states that:

(d) Any person who violates subsection (a) of this section with regard to methamphetamine hydrochloride, cocaine, or heroin *may* be penalized, *in addition to the penalties described in subsection (b)* of this section, as follows:

(1) Any person found guilty of a first offense of possession of one gram or less shall be sentenced to a term of imprisonment of not less than 30 days. Any person convicted of a second offense of possession of less than one gram shall be sentenced to a term of not less than 60 days. Having been convicted of a second offense, any person convicted of subsequent offenses of possession of less than one gram shall be sentenced to a term of imprisonment of not less than 90 days.

(emphasis added).

¶ 7 In *Commonwealth v. Aldan*, the dissent addressed the issue of whether the trial court was required to sentence the defendant under a certain subsection of 6 CMC § 2142. 1997 MP 31 ¶¶ 35-39 (Villagomez, J., dissenting). While the majority’s opinion determined issues not directly related to those at issue in this case, we explicitly adopted the dissent’s analysis of 6 CMC § 2142. 1997 MP 31 ¶ 21 n.8. We found 6 CMC § 2142 to be unambiguous, explaining that:

[R]ead in their entirety, the plain language of subsections 2142(a) through (d), means that a defendant who has been convicted under subsection 2142(a) shall be sentenced under subsection 2142(b). However, if the defendant’s conviction is for possession of methamphetamine, cocaine, or heroine, then in addition to the penalties imposed under subsection (b), the court may also impose the applicable penalties under subsection (d).

*Id.* ¶ 37. We reject Lin’s argument that 6 CMC § 2142(b) is inconsistent with 6 CMC § 2142(d)(1) because it does not explicitly make jail time imposed thereunder subject to suspension, probation or parole. The additional penalties imposed under 6 CMC § 2142(b), referenced in 6 CMC § 2142(d)(1), are a fine of \$2,000.00 and the unavailability of suspension, parole or probation. At the trial court’s discretion, should the judge choose to impose the additional applicable penalties under 6 CMC § 2142(d), he or she is to do so in addition to a fine of \$2,000.00 and the sentence shall not be subject to suspension, parole or probation.

*C. 6 CMC § 2148*

¶ 8 Lin claims that the trial court’s interpretation of 6 CMC § 2142(b) is also inconsistent with 6 CMC § 2148, which authorizes the trial court to defer proceedings upon a plea of guilty or a finding of guilt of possession of a controlled substance under 6 CMC § 2142(a) and place the defendant on probation. In pertinent part, 6 CMC § 2148 states that:

Whenever a person who has not previously been convicted of any offense under this chapter or under any statute of the United States or of any state or territory relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under 6 CMC §2142(a), the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place the accused on probation upon terms and conditions.

¶ 9 When read together, 6 CMC § 2148 and 6 CMC § 2142(b) authorize the trial court, for a first time offender, to proceed under 6 CMC § 2148 without entering a judgment of guilt. However, if the trial court enters a judgment of guilt then the trial court must proceed under 6 CMC § 2142(b). Accordingly, 6 CMC §§ 2148 and 2142(b) are not inconsistent.

*D. Whether 6 CMC § 2142(b) Requires the Imposition of a Jail Sentence*

¶ 10 Lin also argues that the trial court mistakenly ruled that the imposition of a jail sentence is discretionary under 6 CMC § 2142(b). He asserts that “the language of 6 CMC § 2142(b) requires imposition of a term of imprisonment and a fine of \$2,000.00; the Trial Court does not have any discretion whether or not to impose a term of imprisonment.” Appellant’s Opening Br. at 10. During the change of plea hearing, the trial court stated:

[N]ow once this Court exercises its discretion to sentence the Defendant, Mr. Lin, to a term of imprisonment, such term shall not be subject to suspension, probation or parole. [The] sentence that is permissible under the statute is not more than 5 years, so technically, the Court could impose zero jail time, but if there is a jail time to be imposed it cannot exceed 5 years, and if any jail time is imposed, that jail time or term of imprisonment shall not be subject to suspension, parole or probation.

¶ 11 In reviewing the trial court’s application of sentencing guidelines, the reviewing court must construe any perceived statutory ambiguity strictly against the government. *Commonwealth v. Manglona*, 1997 MP 28 ¶ 5 (citing *United States v. Restrepo*, 676 F. Supp. 368, 372 (Mass. Dist. Ct. 1987)). That being said, “[a] misstatement of the understanding of the minimum sentence by the trial judge necessitates a new sentencing hearing only when it appears that the mistaken belief of the judge arguably influenced the sentencing decision.” *People v. Eddington*, 394 N.E.2d 1185, 1188 (Ill. 1979).

¶ 12 Lin is correct in his assertion that the trial court mistakenly believed that imposition of a jail sentence under 6 CMC § 2142(b) is discretionary. Subsection 2142(b) does not by its wording mandate a minimum term of imprisonment – only a maximum term of five years. The phrase “shall be sentenced” modifies both the term of imprisonment and the \$2,000.00 fine. Thus, under 6 CMC § 2142(b), the \$2,000.00 fine is compulsory, as is the imprisonment component, however minimal it may be. Subsection (b) also mandates that any term of imprisonment imposed not be subject to suspension, parole or probation. However, nothing in the record indicates that the trial court’s error – interpreting the minimum sentence of imprisonment under 6 CMC § 2142(b) as zero – influenced the judge’s sentencing decision; the fact that Lin was sentenced to a term of four years is evidence to the contrary. Accordingly, while the trial court judge misinterpreted the minimum sentence required under 6 CMC § 2142(b), this misinterpretation clearly did not influence the sentencing decision.

## II

### Due Process

¶ 13 Lin claims that he was not afforded due process of law because 6 CMC § 2142(b) is unconstitutionally vague. In support of his argument he draws the Court’s attention to the discrepancy between his own sentence and other defendants’ sentences under the same subsection. He asserts that “a review of the events that occurred in the sentencing of [Lin] and the sentencing of [Huang] and [Xu]<sup>2</sup> . . . demonstrates that the language of 6 CMC § 2142(b) is vague and thus [Lin] [was not] afforded due process.” Appellant’s Opening Br. at 14.

¶ 14 Article 1, section 5 of the Commonwealth Constitution provides that “no person shall be deprived of life, liberty or property without due process of law.” A penal statute is unconstitutional and violates due process guarantees if its terms are vague. *Commonwealth v. Bergonia*, 3 NMI 22, 36 (1992).

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<sup>2</sup> In *Commonwealth v. Huang*, Crim. No. 05-0088 (NMI Super. Ct. Month, Day, year), the defendant pled guilty to two counts of possession of a controlled substance in violation of 6 CMC § 2142(a). ER at 30. The trial court sentenced the defendant to five years in jail without parole and waived the \$2,000.00 fine. *Id.* at 28. In *Commonwealth v. Xu*, Superior Court Case No. 05-0029, the Defendant plead guilty to three counts of possession of a controlled substance in violation of 6 CMC § 2142(a). *Id.* at 35. The defendant was sentenced to five years on each count to be served concurrently, supervised probation for ten (10) years, and a \$2,000.00 fine. *Id.* at 36-37.

Sentencing provisions may be unconstitutionally vague “if they do not state with sufficient clarity the consequences of violating the criminal statute in question.” *States v. Batchelder*, 442 US 114, 123 (1979).

¶ 15 As previously discussed in ¶ 5, *supra*, we do not find 6 CMC § 2142(b) to be unconstitutionally vague. The statute makes clear that, for a conviction for possession of a controlled substance in violation of 6 CMC § 2142(a), the consequence is a maximum prison sentence of five years not subject to suspension, parole or probation, and a \$2,000.00 fine. We are also not persuaded by Lin’s argument that he was denied due process because two other defendants were subjected to different sentencing applications of 6 CMC § 2142(b). The mere misinterpretation of a statute does not necessarily make the statute unconstitutionally vague. *See Commonwealth v. Cabrera*, 4 NMI 240 (1995); *Commonwealth v. Cabrera*, 5 NMI 44 (1997).

### III

#### Equal Protection

¶ 16 Lin argues that an individual found guilty of possession of a controlled substance in violation of 6 CMC § 2142(a) is subject to a greater punishment than an individual found guilty of trafficking a controlled substance in violation of 6 CMC § 2141(a). He contends that, theoretically, under 6 CMC § 2141(b), the trial court has the discretion to impose no jail time and a \$1.00 fine, whereas under 6 CMC § 2142(b) the trial court is required to sentence an individual to at least one day of imprisonment and a \$2,000.00 fine. Lin argues that this disparity violates his equal protection rights.

¶ 17 In support of this proposition, Lin cites *People v. Natoli*, an Illinois Court of Appeals case that struck down the sentencing provision for a possession of drugs statute because the maximum penalty for possession was greater than the maximum penalty for the more severe crime of drug dealing. 387 N.E.2d 1096, 1101-02 (Ill. App. Ct. 1979). In *Natoli*, the defendant was convicted by a jury of possession and delivery of a controlled substance. *Id.* at 1098. His sentences of one to three years for delivery and two to six years for possession were to run concurrently. *Id.* The statutory classification for possession was a class three felony while its delivery was denominated a class four felony – a lesser offense. *Id.* The *Natoli* court reversed both convictions, stating that the statute was invalid because “the defendant was given a heavier sentence for possession than *could* have been imposed upon someone convicted of delivery, a worse offense, and was thereby denied equal protection of the law.” *Id.* at 1101-02 (emphasis added).

¶ 18 The equal protection provision of the Commonwealth Constitution states that “no person shall be denied the equal protection of the law.” NMI Const. art. 1, § 6. The equal protection provision “embodies a general rule that States must treat like cases alike but may treat unlike cases accordingly.” *Commonwealth v. Attao*, 2005 MP 8 ¶ 16 (citation omitted).

¶ 19 Lin cites *Natoli* for the proposition that his equal protection rights were violated under 6 CMC § 2142(b) because “a person found guilty of possession is subject to punishment greater than a person convicted of the more serious offense of trafficking . . . .” Appellant’s Opening Br. at 15. However, Lin’s reliance on *Natoli* is inapposite. Lin argues that there is a disparity in the sentencing provisions of 6 CMC § 2141(b) and 6 CMC § 2142(b) because, theoretically, the minimum sentence that could be imposed under 6 CMC § 2142(b) for possession is greater than the minimum sentence that could be imposed under 6 CMC § 2141(b) for trafficking. However, reversal of the defendant’s sentence under the possession statute in *Natoli* was premised on the disparity between the maximum sentence authorized for possession and the maximum sentence authorized for delivery. As previously discussed in ¶¶ 10-12, *supra*, the prison sentencing range available under 6 CMC § 2142(b) for possession is a maximum of five years, whereas the prison sentencing range available under 6 CMC § 2141(b) for trafficking is “a term of imprisonment for not less than 25 years” up to an indeterminate maximum. Lin’s sentence of four years imprisonment not subject to suspension, parole or probation and a \$2,000.00 fine is not greater than the maximum sentence authorized under 6 CMC § 2141(b). Thus, an individual found guilty of possession of a controlled substance in violation of 6 CMC § 2142(a) is not subject to a greater punishment than an individual found guilty of trafficking a controlled substance in violation of 6 CMC § 2141(a). Accordingly, Lin’s equal protection claim must fail.

#### IV

#### Conclusion

¶ 20 For the foregoing reasons, we hold that 6 CMC § 2142(b) is not unconstitutional and that the trial court properly interpreted the statute as not permitting suspension, parole or probation. Accordingly, Lin’s conviction and sentence pursuant to 6 CMC § 2142(b) is AFFIRMED.

SO ORDERED this 23rd day of February 2010.

/s/ \_\_\_\_\_  
MIGUEL S. DEMAPAN  
Chief Justice

/s/ \_\_\_\_\_  
ALEXANDRO C. CASTRO  
Associate Justice

/s/

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JESUS C. BORJA  
Justice Pro Tem