



FOR PUBLICATION



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By order of the Court, Presiding Judge Roberto C. Naraja

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

SHAWN APPLEBY,	)	CIVIL ACTION NO. 20-0168
	)	
Plaintiff,	)	
	)	
v.	)	
	)	ORDER DISMISSING CASE
WALLY VILLAGOMEZ, CNMI	)	FOR LACK OF SUBJECT
DEPARTMENT OF CORRECTIONS	)	MATTER JURISDICTION
(DOC) and RAMON B. CAMACHO,	)	
CHAIRMAN, CNMI BOARD OF PAROLE	)	
(BOP),	)	
	)	
Defendants.	)	
	)	

I. INTRODUCTION

THIS MATTER came before the Superior Court for the Northern Mariana Islands on July 29, 2020 at 9:30 a.m., for a hearing on Defendant’s Department of Correction’s (“DOC”) Motion to Dismiss Writ of Habeas Corpus as Moot. Chief Solicitor J. Robert Glass, Jr. appeared for the Defendant CNMI Department of Corrections’ Wally Villagomez, in his official capacity as Commissioner for DOC. Assistant Public Defender Jean Pierre Nogues appeared for Plaintiff Shawn Appleby, who was also present. Assistant Attorney General Leslie Healer appeared for Defendant Board of Parole (“BOP”).

Based on the reasons below, the Court does not address the merits of the arguments and instead **DISMISSES** the civil action for lack of subject matter jurisdiction.

II. FACTS

The relevant facts in this case are as follows:

1 On November 11, 1996, Appleby was convicted of committing First Degree Murder  
2 (Criminal Case No. 96-0319). He was sentenced to forty years of imprisonment, with a minimum  
3 term of ten years to be served. *See Commonwealth v. Appleby*, 2007 MP 19 ¶ 2. While serving his  
4 jail term, Appleby escaped prison and was apprehended and convicted of the new offense (Criminal  
5 Case No. 99-479). *See Commonwealth v. Appleby*, Criminal Case 99-479 (Super. Ct. Nov. 23, 1999)  
6 (Judgment and Commitment Order) (unpublished). He was sentenced to three years imprisonment  
7 with two years suspended and the sentence was to run consecutively to the forty years sentence in  
8 Criminal Case 96-0319. *Id.*

9 Appleby was paroled on September 9, 2019 and was arrested on March 25, 2020 on a parole  
10 violation warrant.

11 Appleby chose to exercise his right to a preliminary hearing to determine probable cause  
12 and on April 13, 2020, a hearing officer determined there was probable cause during a preliminary  
13 hearing.

14 On June 15, 2020, the BOP issued a notice of final revocation hearing stating the revocation  
15 hearing was set for July 10, 2020.

16 On June 19, 2020, Shawn Appleby, represented by Public Defender Jean Pierre Nogues,  
17 filed a Petition for Writ of Habeas Corpus in the above-captioned matter.

18 At the time the Petition for Writ of Habeas Corpus was filed, the final revocation hearing  
19 had not taken place.

20 The Final Revocation Order was issued on July 17, 2020

### 21 III. LEGAL STANDARD

22 “If the court determines at any time that it lacks subject-matter jurisdiction, the court must  
23 dismiss the action.” NMI R. CIV. P. 12(h)(3).

1 BOP agency actions and their appeals are governed by the Administrative Procedure Act. 1  
2 CMC §9101(b)-(e); *See* 1 CMC §§9101–9115 et. al. If a person suffers a legal wrong because of  
3 agency action or adversely affected or aggrieved by agency action, the person is entitled to judicial  
4 review of the action within 30 days in the CNMI Superior Court. 1 CMC §9112(b). A preliminary,  
5 procedural, or intermediate agency action or ruling not directly reviewable *is subject to review on*  
6 *the review of the final agency action.* 1 CMC §9112(d) (emphasis added).

#### 7 IV. DISCUSSION

8 Here, the BOP agency actions Appleby alleges in his writ are preliminary and not final.  
9 *Morrissey v. Brewer*, 408 U.S. 471, 487 (1972) (“it should be remembered that this [preliminary  
10 hearings] is not a final determination.”). In this case the final agency action would be the Final  
11 Revocation Order. The actions alleged in this case can only be reviewed, according to 1 CMC  
12 §9112(d), when the Final Revocation Order is reviewed. The Final Revocation Order is not under  
13 review in this case, and thus, without it, the Court lacks subject matter jurisdiction in this case. This  
14 leaves the court no choice but to **DISMISS WITHOUT PREJUDICE** the current action. Mr.  
15 Appleby is free to assert the same allegations regarding the preliminary hearing if he chooses to  
16 appeal the Final Revocation Order.

#### 17 V. CONCLUSION

18 For the reasons stated above, this matter is **DISMISSED WITHOUT PREJUDICE**<sup>1</sup> for  
19 lack of subject matter jurisdiction.

20 **IT IS SO ORDERED** this 17th day of August, 2020.

21 /s/  
22 **ROBERTO C. NARAJA**  
23 Presiding Judge

24 <sup>1</sup> The Court acknowledges that the deadline to appeal the Final Revocation Order is today. The Court will Allow Appleby to amend his appeal (if any) to include the allegations set forth in this Writ.