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IN THE SUPERIOR COURT
FOR THE

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN)
MARIANA ISLANDS,)

Plaintiff,)

v.)

ANTHONY PETER RIOS,)
(d.o.b. 04/24/1974))

Defendant.)

CRIMINAL CASE NO. 03-0031
CRIMINAL CASE NO. 03-0030
CRIMINAL CASE NO. 97-0294

ORDER DENYING MOTION
TO REDUCE SENTENCE

I. INTRODUCTION

THIS MATTER came before the Court on October 17, 2022 at 9:30 a.m. for a hearing on Defendant Anthony Peter Rios's ("Defendant") Motion to Reduce Sentence (the "Motion"). Assistant Attorney General Steven Kessell represented the Commonwealth of the Northern Mariana Islands ("Commonwealth"). Court-appointed counsel Cong Nie represented Defendant, who appeared under the custody of the Department of Corrections.

Based upon a review of the arguments, filings, and relevant law, and for the reasons stated herein, the Court **DENIES** the Motion.

II. BACKGROUND

In 1997, Defendant pleaded guilty to three counts of Sexual Abuse of a Child, two counts of Oral Copulation, and one count of Rape. *Commonwealth v. Rios*, 2015 MP 12 ¶ 2. Defendant was sentenced to five years imprisonment for one count of Sexual Abuse of a Child and forty years for the remaining five counts, all forty of which were suspended. *Id.* (citing *Commonwealth v. Rios*, No. 97-294D (NMI Super. Ct. Oct. 29, 1997) (Judgment and Commitment Order at 2-3)).

1 In 2003, Defendant was released from prison. *Id.* at ¶ 3. He reoffended within five months of
2 release and pled guilty to Sexual Assault in the Second Degree. *Id.* He was sentenced to ten years
3 imprisonment, all but five years suspended. *Id.* (citing *Commonwealth v. Rios*, Nos. 03-0031A/03-
4 0030E (NMI Super. Ct. Dec. 31, 2003) (Judgment and Commitment Order at 2)). In 2008, after
5 serving five years for his Sexual Assault in the Second Degree conviction, Defendant was released
6 from prison and placed on probation. *Id.* at ¶ 4.

7 In 2012, while still on probation for his 1997 and 2003 cases, Defendant was arrested and
8 charged with two counts of Sexual Assault in the Second Degree, two counts of Assault and Battery,
9 and two counts of Disturbing the Peace for touching a victim's genitals without her consent. *Id.* (citing
10 *Commonwealth v. Rios*, Nos. 97-0294/03-0030/03-0031 (NMI Super. Ct. Sept. 24, 2012) (Revocation
11 of Probation and Commitment Order at 1)). Based on these new criminal charges, the Commonwealth
12 moved to revoke Defendant's probation. *Id.*

13 At the revocation hearing, the 2012 violations were proven by a preponderance of the evidence.
14 *Id.* at ¶ 5. Defendant was sentenced to the maximum forty-year sentence in the 1997 case and to the
15 maximum five-year sentence in the 2003 case, for a total of forty-five years, without the possibility of
16 parole or early release. *Id.* (citing Revocation of Probation and Commitment Order at 2-3).

17 While serving his probation revocation sentence and awaiting trial for his 2012 arrest,
18 Defendant was charged with one count of Disturbing the Peace for an unrelated incident and sentenced
19 to six months imprisonment, to run concurrently with his forty-five year probation revocation
20 sentence. *Id.* at ¶ 6 (citing *Commonwealth v. Rios*, No. 12-0007 (NMI Super. Ct. Feb. 1, 2013)
21 (Judgment of Conviction and Sentencing Order)).

22 Defendant's trial for the 2012 arrest commenced in 2013, and he was convicted of one count
23 of Assault and Battery and one count of Disturbing the Peace. *Commonwealth v. Rios*, No. 12-0110

(NMI Super. Ct. Mar. 28, 2013) (Judgment of Conviction at 1).¹ Defendant appealed his convictions, sentences, and probation revocation to the NMI Supreme Court. *See Commonwealth v. Rios*, 2015 MP 12. The NMI Supreme Court affirmed Defendant’s convictions, sentences, and probation revocation on December 11, 2015. *Id.* at ¶ 39. Defendant petitioned for a rehearing, which the NMI Supreme Court denied on January 11, 2018. *See Commonwealth v. Rios*, Appeal Case No. 2013-SCC-0014-CRM (Sup. Ct. Jan. 11, 2018) (Order Denying Petition for Rehearing).

On January 25, 2018, Defendant, acting *pro se*, filed a handwritten “Motion for Reduction of Sentence[.]” seeking to reduce his forty-five year probation revocation sentence. *See* Memorandum of Law in Support of Motion to Reduce Sentence (filed September 19, 2022) at 1. The Motion was not acted on. On August 17, 2022, Defendant, through his court-appointed counsel, renewed the Motion before the Court. Defendant thereafter filed his Memorandum of Law in Support of Motion to Reduce Sentence, and the Commonwealth timely filed an Opposition. The Court now rules as follows.

III. LEGAL STANDARD

The Commonwealth Criminal Code, Section 4114 provides:

The court may correct an illegal sentence *at any time*. The Court may reduce a sentence *within 120 days* after the sentence is imposed, or *within 60 days* after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal.

6 CMC § 4114 (emphasis added).

NMI Rule of Criminal Procedure 35 provides:

(a) Correction of Sentence. The court may correct an illegal sentence *at any time* and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

¹ Defendant was sentenced to one year imprisonment for Assault and Battery and six months imprisonment for Disturbing the Peace, for a total of eighteen months to run concurrently with his forty-five year probation revocation sentence, and with credit for eighteen months already served. *Commonwealth v. Rios*, No. 12-0110 (NMI Super. Ct. Feb. 22, 2023) (Amended Sentencing Order).

1 (b) Reduction of Sentence. A motion to reduce a sentence may be made, or the court
2 may reduce a sentence without motion, *within 120 days* after the sentence is imposed
3 or probation is revoked, or *within 120 days* after receipt by the court of a mandate
4 issued upon affirmance of the judgment or dismissal of the appeal, or *within 120 days*
after entry of any order or judgment of the Supreme Court denying review of, or having
the effect of upholding, a judgment of conviction or probation revocation. . . .

5 NMI R. Crim. P. 35 (emphasis added).

6 NMI Rule of Criminal Procedure 35 is modeled after the pre-1987 version of Federal Rule of
7 Criminal Procedure 35. As such, it is appropriate to look to federal interpretation of the rule. *See*
8 *Commonwealth v. Attao*, 2005 MP 8 ¶ 9 n.7 (“Because the Commonwealth Rules of Criminal
9 Procedure are patterned after the Federal Rules of Criminal Procedure, [we have] long held that it is
10 appropriate to consult interpretations of the federal rules when interpreting the Commonwealth Rules
11 of Criminal Procedure.”).

12 The Federal Rules Advisory Committee stated that “the underlying objective of [R]ule 35 . . .
13 is to give every convicted defendant a second round before the sentencing judge and afford the judge
14 an opportunity to reconsider the sentence in light of any further information about the defendant or the
15 case which may have been presented to him in the interim.” Fed. R. Crim. P. 35(b) (1983) (Notes of
16 Advisory Committee on Rules, 1983 Amendment). “A motion for a reduction of sentence pursuant to
17 Rule 35(b) . . . is essentially a ‘plea for leniency’ which offers the sentencing court an opportunity to
18 temper its original sentence when presented with considerations appealing to its compassion.” *United*
19 *States v. Distasio*, 820 F.2d 20, 24 (1st Cir. 1987); *see also United States v. Smith*, 650 F.2d 206, 208
20 (9th Cir. 1981) (“The function of Rule 35(b) is simply to allow the district court to decide if, on further
21 reflection, the original sentence now seems unduly harsh.”) (internal quotations omitted).

22 A Rule 35(b) motion is left to the informed discretion of the trial court, and denial of the motion
23 will only be reversed for “illegality” or for a “gross abuse of discretion.” *Distasio*, 820 F.2d at 24.
24 Rule 35(b) does not require the sentencing judge to justify his decision, nor does it set out any

1 guidelines for a judge to consider when making this decision. However, many decisions have issued
2 providing reasons for and against reduction, and in deciding whether to reduce a sentence, courts have
3 considered a variety of factors. *See, e.g., Irizzary v. United States*, 58 F.R.D. 65 (D. Mass. 1973)
4 (reducing sentence based on hardship faced by defendant's wife and children in his absence, which
5 was verified by a probation officer who recommended reduction after observing the deterioration of
6 the family); *Gov't of Virgin Islands v. Santiago*, 798 F.Supp. 274 (D.V.I. 1992) (reducing sentence
7 based in part on defendant's successful drug rehabilitation efforts); *United States v. Ochs*, 490 F.Supp.
8 1206 (S.D.N.Y. 1980) (denying request for reduction of sentence in the absence of evidence of true
9 rehabilitation and contrition).

10 IV. DISCUSSION

11 A. The Court Does Not Have Jurisdiction to Consider Defendant's Untimely Motion.

12 The Court does not have jurisdiction to reach the merits of Defendant's argument in favor of
13 leniency because Defendant's motion is time barred. *See State v. Mace*, 157 Idaho 885, 888 (Ct. App.
14 2015) ("A court does not possess jurisdiction to consider an untimely Rule 35(b) motion."). Section
15 4114 of the Commonwealth Criminal Code and NMI Rule of Criminal Procedure 35 place strict time
16 limits upon a court's discretion to reduce a sentence.

17 Under both § 4114 and Rule 35(b), a court, of its own accord or pursuant to a motion to reduce
18 sentence, may reduce a sentence within 120 days after the sentence is imposed. 6 CMC § 4114; NMI
19 R. Crim. P. 35(b). A sentence is imposed for purposes of Rule 35 when the oral pronouncement is
20 made. *See Commonwealth v. Laniyo*, 2012 MP 1 ¶¶ 10-12. Neither party has identified the date on
21 which the oral pronouncement revoking Defendant's probation was made, but the Court's order
22 memorializing the sentence was issued on **September 24, 2012**. Defendant's Motion, filed **January**
23 **25, 2018**, was brought well past the 120-day deadline.

The statute and rule also provide that a court may reduce a sentence within 60 (under § 4114) or 120 (under Rule 35(b)) days of receipt by the court of a mandate issued by the NMI Supreme Court affirming the judgment or dismissing the appeal. 6 CMC § 4114; NMI R. Crim. P. 35(b). Here, the NMI Supreme Court affirmed Defendant's convictions, sentences, and probation revocation in Case Nos. 97-0294-CR, 03-0030-CR, 03-0031-CR, 12-0007-CR, and 12-0110-CR on **December 11, 2015**. *See Commonwealth v. Rios*, 2015 MP 12 ¶ 39. Defendant's Motion, filed **January 25, 2018**, was brought well past § 4114's 60-day deadline and Rule 35(b)'s 120-day deadline.

To the extent Defendant is arguing that he had 120 days from the NMI Supreme Court’s denial of his petition for rehearing to bring this Motion, the Court disagrees. Rule 35(b) provides that “a motion to reduce a sentence may be made . . . within 120 days after entry of any order or judgment . . . having the effect of upholding[] a judgment of conviction or probation revocation . . .” Such an order was entered by the NMI Supreme Court on December 11, 2015 when it affirmed Defendant’s convictions, sentences, and probation revocation. *See Commonwealth v. Rios*, 2015 MP 12. To read the rule otherwise and allow the deadline for filing a motion to reduce sentence to be tolled each and every time a defendant brings a new appeal, motion for reconsideration, or petition for rehearing would allow for a sentence to be disturbed countless years after it was imposed and undermine finality. *See State v. Dowdy*, 2012 WI 12 ¶¶ 98-100 (Sup. Ct. Feb. 14, 2012) (“The narrow constraints on circuit courts’ inherent authority to modify sentences are motivated by the importance of finality in sentencing. . . . Without a strong emphasis on finality in sentencing, defendants and potential offenders would come to believe that sentences are freely modifiable and that offenders need not serve their full sentences. For this reason, the deterrent effect of criminal sentences would be reduced. Retribution would be similarly undermined. . . . If there were less finality in sentencing, the message that the sentence chosen coincides with the debt a defendant owes to society would be undermined.”).

1 Because Defendant's Motion is untimely, the Court does not have jurisdiction to reach the
2 merits of Defendant's argument for leniency. Accordingly, the Motion is **DENIED** on these grounds.

3 **B. To the Extent Defendant is Arguing That His Sentence Is Illegal and Therefore His**
4 **Motion Is Not Subject to Time Constraints, the NMI Supreme Court Has Already**
5 **Definitively Ruled Against Defendant on This Issue.**

6 Defendant raises a second, separate argument in support of reducing his sentence. Defendant
7 argues that his probation revocation sentence was illegal because, due to an alleged miscalculation, it
8 erroneously increased his sentence by five years and therefore violated Double Jeopardy. *See*
9 Memorandum of Law in Support of Motion to Reduce Sentence at 6-8.

10 Indeed, Section 4114 and Rule 35(a) both provide that "[t]he court may correct an illegal
11 sentence *at any time*." 6 CMC § 4114 (emphasis added); NMI R. Crim. P. 35(a) (emphasis added).
12 However, Defendant's argument fails because Defendant has already raised this issue before the NMI
13 Supreme Court, which definitively ruled against Defendant when it found that Defendant's probation
14 revocation sentence was accurately calculated:

15 Rios argues his sentence was calculated incorrectly at his probation revocation. . . .
16 Upon revocation, Rios was sentenced to forty years imprisonment for the 1997 case
17 and five years for the 2003 case, for a total of forty-five years. Rios asserts the court
18 erred by imposing forty years imprisonment from the 1997 case because "the sentence
19 in Counts I and IV should have been concurrent with the remaining Counts, VI, IX, XI,
20 and XXII, being consecutive." In the 1997 criminal case, Rios was sentenced to five
21 years imprisonment on Count I. The remainder of his sentences were suspended: five
22 years for Count IV, ten years for Count VI, ten years for Count IX, five years for Count
23 XI, and ten years for Count XII. The written order states: "The sentences imposed in
24 Counts IV, VI, IX, XI and XII shall run *consecutively and concurrent* with the
sentence imposed in Count I."

When there is an ambiguity in a court's sentence, it is appropriate to consult extrinsic
evidence. Here, the sentence was entered pursuant to plea agreement. The plea
agreement provides:

Fifty (50) years in jail, all suspended except for the first five (5) years without
the possibility of parole, with credit for time served. The sentence is computed
as follows: Count I, five (5) years; Count IV, five (5) years; Count VI, ten (10)

1 years; Count IX, ten (10) years; Count XI, five (5) years; Count XII ten (10)
2 years. *All sentences are to run consecutively.*

3 The court's written order adopted the individual sentencing recommendations for each
4 of the six counts from the plea agreement. While the full sentence in the plea agreement
5 was miscalculated—it should total forty-five years rather than fifty—the plea is clear
6 that Rios should serve five years in prison with the remainder of his sentence
7 suspended. Consequently, Rios's suspended sentence from 1997 was forty years.
8 Together with the five year suspended sentence from his 2003 conviction, Rios was
9 subject to a total suspended sentence of forty-five years. Accordingly, we conclude the
10 trial court did not abuse its discretion by sentencing Rios to forty-five years when it
11 revoked his probation from the 1997 and 2003 criminal cases.

12 *Commonwealth v. Rios*, 2015 MP 12 ¶¶ 35-38 (emphasis added) (internal citations omitted).

13 This Court is bound to follow the mandate of the NMI Supreme Court. *See Loren v. E'Saipan*
14 *Motors, Inc.*, 1 NMI 133, 137-38 (1990) ("The trial court had a duty to comply strictly with the
15 mandate of the appellate court."). Accordingly, Defendant's attempt to rehash this argument is
16 unavailing, and the Motion is **DENIED** on these grounds.

17 V. CONCLUSION

18 **THEREFORE**, for the reasons stated above, the Court **DENIES** Defendant's Motion to
19 Reduce Sentence.

20 **IT IS SO ORDERED** this 8th day of August, 2023.

21 /s/

22 **ROBERTO C. NARAJA**
23 Presiding Judge
24