

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

COMMONWEALTH OF THE )  
NORTHERN MARIANA ISLANDS, )  
 )  
                                ) Plaintiff, )  
 )  
                                ) vs. )  
 )  
DIEGO MUNDO, )  
 )  
                                ) Defendant. )  
\_\_\_\_\_ )

CRIMINAL CASE NO. 98-0123T  
98-0245, 98-0343, 99-0271

**ORDER DENYING DEFENDANT’S  
MOTION TO CORRECT OR  
MODIFY SENTENCE**

**I. PROCEDURAL BACKGROUND**

This matter came before the court on October 20, 1999, in courtroom 217A, on Defendant Diego Mundo’s motion to correct sentencing order of April 9, 1999. Assistant Attorney General Kevin A. Lynch, Esq., appeared on behalf of the Government. Assistant Public Defender Daniel C. Bowen, Esq., appeared on behalf of the Defendant. The court, having reviewed the memoranda, declarations, and exhibits, having heard and considered the arguments of counsel, and being fully informed of the premises, now renders its written decision. [p. 2]

**II. FACTUAL BACKGROUND**

1. On April 30, 1998, the Office of the Attorney General filed an Information in Criminal Case 98-0123T, charging the Defendant with one count of attempted assault with a dangerous weapon and one count of obstructing justice in connection with an alleged threat to stab Officer Julian Manglona on January 3, 1998.
2. On July 8, 1998, the Office of the Attorney General filed an Information in Criminal Case 98-245T, charging the Defendant with one count of obstructing justice, one count of attempted assault on Officer Matthew Masga, one count of reckless driving, and one count of resisting arrest arising from events occurring on or about June 11, 1998.

**FOR PUBLICATION**

3. On August 26, 1998, the Defendant was arrested in connection with an Information filed in Criminal Case 98-343B, charging the Defendant with one count of assault and battery, one count of disturbing the peace, and one count of criminal contempt of court arising out of an August 26, 1998 altercation between the Defendant and one Conrad Manglona. Following the posting of a property bond, the Defendant was released from custody on the condition that he obey all Commonwealth laws and observe a daily curfew from 8:00 p.m. to 6:00 a.m. At a status conference on October 2, 1998, this court consolidated Criminal Case 98-343T with Criminal Cases 98-123, 98-245 and 98-124.
4. On December 10, 1998, following a trial to the court in Case No. 245-T, the Defendant was found not guilty of the crime of obstructing justice. However, the court found the Defendant guilty of a lesser included offense of assault and battery, reckless driving, and resisting arrest, as charged in Counts II through IV of the Information.
5. On February 8, 1999, the Defendant was found guilty of attempted assault with a dangerous weapon and obstructing justice, as charged in Counts I and II of the Information in Criminal Case No. 98-123T.
6. On April 9, 1999, Cases 98-123T and 98-245 T came before the court for sentencing. In a written Order entered April 14, 1999 (the "Sentencing Order"), the court sentenced the [p. 3] Defendant to serve one year imprisonment in Criminal Case No. 98-123T<sup>1</sup> and six months and thirty days imprisonment in Criminal Case 98-245T to run consecutively with the sentence in Criminal Case 98-123T. As additional conditions for the suspended sentence, the Sentencing Order further directed the Defendant to make an appointment at the Commonwealth Health Center for a counseling evaluation and, if found appropriate, to attend counseling. In addition, the Sentencing Order required the Defendant to obey all laws of the Commonwealth and the United States, and placed the Defendant on supervised

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<sup>1</sup> In Criminal Case No. 98-123T, the court sentenced the Defendant to five years imprisonment, all suspended, except for one year, for the offense of attempted assault with a dangerous weapon, and one year imprisonment for obstructing justice. The sentence for obstructing justice was to run concurrently with the sentence for attempted assault.

probation for a period of four years following service of jail time.<sup>2</sup> Finally, the Sentencing Order provided, in material part, that any inconsistency between the written order and the oral pronouncement of sentencing in open court would be resolved in favor of the written order.

7. On July 26, 1999, the Defendant filed the instant motion requesting that this court amend the written sentencing order to eliminate the provision requiring supervised probation following service of jail time.<sup>3</sup> Shortly thereafter, the Defendant filed a Supplemental Motion for Reconsideration of Sentence, asking the court to delay its ruling until the Board of Parole met to consider the Defendant's eligibility for parole. [p. 4]
8. By letter dated September 15, 1999 Defendant was notified that he was ineligible for parole because he was on probation for prior criminal and traffic convictions (Amended Mot. for Reconsideration, Ex. A).

### III. QUESTION PRESENTED

Whether a sentence that requires a defendant to fulfill conditions in addition to imprisonment contemplates placing the defendant on probation during the term of the suspended sentence?

### IV. ANALYSIS

6 CMC § 4105 permits the court to suspend or modify all or part of a sentence when a suspension or modification serves the best interest of justice. Pursuant to Com. R. Crim. P. 35, the court may modify a sentence provided that a motion to reduce or correct the sentence has been timely filed.

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<sup>2</sup> On June 23, 1999, following a motion to postpone incarceration filed by the Defendant on April 27, 1999, the Office of the Attorney General filed an Information in Criminal Case 99-271T, charging the Defendant with one count of criminal contempt of court and one count of obstructing justice for failing to comply with a curfew order and unlawfully resisting arrest on August 30, 1998. Following a hearing on June 30, 1999, the court consolidated Criminal Case No 99-271 with Criminal Case No. 98-343T. On August 4, 1999, the Defendant and the Government entered into a plea agreement to resolve Criminal Cases 98-343T and 99-217T. In exchange for a plea of guilty to the charges of obstructing justice and criminal contempt of court in Criminal Case No. 99-271 T, the Government agreed to dismiss all charges in Criminal Case No. 98-343T and to a sentence of 30 days incarceration consecutive to Defendant's current sentence.

<sup>3</sup> The record also contains a series of *ex parte* letters from the Defendant to the court requesting that the court reconsider and reduce his sentence. The court does not treat these communications as a Motion to Reduce Sentence under 6 CMC § 4114 and Com. R. Crim. P. 35. As evidenced by the Motion at issue, Defendant is represented by counsel and any and all such requests must therefore be made through his attorney. Even if the court were so inclined to consider the request, moreover, the Defendant's record does not justify any gratuitous leniency.

In the instant case, Defendant argues that because the court did not order probation during the oral pronouncement of sentencing, the Sentencing Order should be amended to remove the provision requiring supervised probation during the term of the suspended sentence. The court disagrees. As an initial matter, when a court imposes a sentence that requires a defendant to perform conditions in addition to imprisonment, the sentence is not self-executing. To insure that all provisions of the sentencing order will be satisfied, there must be some way to oversee compliance and monitor a defendant's activities during the suspended portion of the sentence. Supervised probation provides a vehicle to determine accountability. Accordingly, the Sentencing Order appropriately included a provision placing the Defendant on supervised probation for the term of the suspended sentence. To order otherwise poses an unacceptable risk that the remaining conditions of the sentence may not be satisfied, thereby rendering the remaining conditions of the sentence meaningless. [p. 5]

#### V. CONCLUSION

For all the reasons stated above, Defendant's motion to correct sentencing order to eliminate probation is **DENIED**.

So ORDERED this 18 day of January, 2000.

/s/ Timothy H. Bellas  
TIMOTHY H. BELLAS, Associate Judge