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FOR PUBLICATION

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,	)	<b>CRIMINAL CASE NO. 02-0391E</b>
	)	
Plaintiff,	)	<b>ORDER DENYING DEFENDANT’S ORAL</b>
	)	<b>MOTION FOR APPOINTMENT OF AN</b>
v.	)	<b>INTERPRETER WITHOUT PREJUDICE</b>
	)	
CHORLY PETER MESIK,	)	
	)	
Defendant.	)	
	)	

**I. INTRODUCTION**

**THIS MATTER** came on for hearing on December 4, and December 5, 2002, in Courtroom 205A at 3:00 p.m. on Defendant’s application for modification of bail and for other purposes. Assistant Attorney General Donald Wolfe, appeared on behalf of the Commonwealth of the Northern Mariana Islands (“Government”). Assistant Public Defender Mitchell Anstedt, appeared with Defendant, who was in custody. At the hearing, Defendant orally moved to continue the hearing until after a preliminary hearing was conducted. For good cause shown and in light of the Government’s filing of the First Amended Information, the Court calendared the preliminary hearing and Defendant’s application for a modification of bail for December 5, 2002, at 10:30 a.m.

During the hearing of December 4, counsel for Defendant orally moved for a court appointed Chuukese interpreter. In support of Defendant’s motion, counsel stated that he had just met his client and found Defendant’s understanding of the English language limited. The Court proceeded to enter in a colloquy in English with Defendant. In response to the Court’s inquiries, Defendant stated that she was

1 originally from Chuuk, that she attended school and completed the eleventh grade. Defendant, when asked  
2 if she understood English, stated “a little.” After the colloquy, Defendant, through counsel, renewed her  
3 oral motion for appointment of an interpreter and argued that to deny her right to an interpreter would  
4 violate her right to due process. The Court reserved its ruling and ordered defense counsel to reduce the  
5 oral motion to writing and file it prior to the preliminary hearing.

6 On December 5, 2002, counsel for Defendant advised the Court that he was unable to file  
7 Defendant’s motion for a court-appointed interpreter but indicated he did not want to withdraw the oral  
8 motion or waive his client’s right to an interpreter. The Court, having considered the record, the applicable  
9 laws, and being fully advised, denied Defendant’s oral motion for an interpreter without prejudice. This  
10 written order follows the Court’s oral ruling of December 5, 2002.

11 **II. QUESTION PRESENTED**

12 Whether a court has an affirmative obligation to appoint an interpreter for Defendant where  
13 Defendant’s lack of fluency or facility in the English language is not apparent.

14 **III. ANALYSIS**

15 It is well settled that the appointment of an interpreter is within the discretion of the trial court. Two  
16 CNMI court rules address the appointment of interpreters or translators. Rule 28 of the Rules of Criminal  
17 Procedure provides: “[t]he court may appoint an interpreter of its own selection and may fix the reasonable  
18 compensation of such interpreter. Such compensation shall be paid out of funds provided by law or by the  
19 government, as the court may direct.” Com. R. Crim. P. 28. Additionally, Rule 28 of the Rules of Practice  
20 provides:

21 In any civil or criminal proceeding which may require testimony to be  
22 translated in a language other than Chamorro or Carolinian the party who  
23 anticipates producing such testimony shall notify the Court of that fact at least  
24 five (5) days before the time set for producing the testimony. Said notice shall  
25 be in writing and filed with the Court and shall include the language (and its  
26 specific dialect, if any) to be translated as well as the party’s proposed translator,  
27 if any. A copy of the notice shall be served on the opposing counsel  
28 or party if unrepresented. Upon receiving notice of a proposed translator,  
the opposing counsel or party shall give prompt notice of any objection to the  
translator.

In civil proceedings, it shall be the responsibility of the party requiring the  
translator to have the translator present at the proceeding and to pay the costs of  
the same. In criminal proceedings, the Court will provide and pay for the  
translator for the defendant.

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Com. R. Prac. 28.

A review of CNMI laws show that CNMI does not have any rules or statutes setting forth the factors or test for the appointment of an interpreter. The N.M.I. Supreme Court in *Jasper v. Quitugua*, 1999 MP 4, 5 N.M.I. 220, while not on point, alludes to the standard a court should apply in considering a defendant’s motion for an interpreter. In *Jasper*, the N.M.I. Supreme Court, reviewing, on due process and equal protection grounds, the trial court’s refusal to permit a *pro se* Chamorro defendant to question a witness in Chamorro, recognized that the trial court does not have an affirmative duty to appoint an interpreter for a defendant where the defendant’s lack of fluency or facility in English was not apparent. *Id.* at ¶ 11, 5 N.M.I. at 223 (citing *Washington v. Mendez*, 784 P.2d 168, 170 (Wash. Ct. App. 1989)).

This court finds *Mendez*, cited by the N.M.I. Supreme Court in *Jasper*, instructive to the case at bar. In *Mendez*, the Court of Appeals of Washington affirmed the trial court’s denial of a criminal defendant’s motion to withdraw a guilty plea. One of the issues raised by the defendant was whether the trial court had an independent duty to ascertain whether or not a defendant entering a guilty plea is fluent in the English language. The court in *Mendez* applied the American Heritage Dictionary’s definition of “fluent” as “[h]aving facility in the use of language” and indicated that the test was for the court to “look[] to see if the person can readily speak and understand the English language” 784 P.2d at 170-71. A defendant’s facility in the English language has to be such that he or she can speak and understand the court or trial proceeding and present his or her defense. If the court determines that the defendant is not fluent in English or cannot readily speak or understand the English language then it must appoint an interpreter. The trial court does not have an affirmative duty to appoint an interpreter where the defendant’s lack of fluency or facility in the English language is not apparent. *Id.* at 171.

Here, Defendant’s oral motion for an interpreter was based solely on defense counsel’s oral assertions that he was just recently appointed and that he spoke to his client briefly prior to the hearing and had difficulty communicating with her. Counsel’s oral motion was not supported or corroborated by a declaration by Defendant of her ability or inability to speak English nor was the motion supported by

1 affidavits from others familiar with Defendant's language skills. Furthermore, the Court *sue sponte* engaged  
2 in a colloquy with Defendant and found that Defendant's responses to the Court's questions were in  
3 English, were adequate, and that her lack of fluency in the English language was not readily apparent.  
4 While the Court is aware of the constitutional implications of Defendant's right to an interpreter, it finds  
5 defense counsel's uncorroborated oral assertions insufficient to justify the appointment of an interpreter at  
6 this time.

7 **IV. CONCLUSION**

8 For the foregoing reasons, Defendant's oral motion for appointment of an interpreter is DENIED  
9 without prejudice.

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11  
12 **SO ORDERED** this 20th day of December 2002.

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15 /s/ Virginia S. Sablan Onerheim  
16 VIRGINIA S. SABLAN ONERHEIM, Associate Judge  
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