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2 **FOR PUBLICATION**

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5 **IN THE SUPERIOR COURT**  
6 **FOR THE**  
7 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

8 **COMMONWEALTH OF THE** ) **CRIMINAL CASE NO. 04-0106C**  
9 **NORTHERN MARIANA ISLANDS,** )  
10 )  
11 ) **Plaintiff,** )  
12 )  
13 ) **v.** )  
14 ) **DAVIS CLYDE P. DIAZ,** ) **SENTENCE AND**  
15 ) **COMMITMENT ORDER**  
16 ) **Defendant.** )  
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18 THIS MATTER came before the Court for a Sentencing on August 20, 2004, at 1:30 p.m.  
19 in courtroom 220A of the Guma Hustisia/Imwal Aweewee on Saipan. The Commonwealth of the  
20 Northern Mariana Islands was represented by Assistant Attorney General Phillip Tydingco.  
21 Defendant Davis Clyde P. Diaz appeared with his counsel, Alexander Gorman, Esq.

23 On June 2, 2004, the Defendant entered a guilty plea pursuant to a plea agreement, and this  
24 Court found him guilty of Burglary, as charged in Count I of the Information, in violation of 6 CMC  
25 § 1801(a); of Criminal Mischief as charged in Count III of the Information, in violation of 6 CMC  
26 § 1803(a); and of misdemeanor Theft as charged in Count IV of the Information, in violation of 6  
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1 CMC § 1601(a). The Court further finds that for the crime of Burglary, Defendant is subject,  
2 pursuant to 6 CMC § 1801(b)(2)(A) and 6 CMC § 4101(a), to a sentence of a minimum of no jail  
3 time to a maximum of ten (10) years; and to a minimum of no fine to a maximum of \$10,000. For  
4 the crime of Criminal Mischief, Defendant is subject, pursuant to 6 CMC §§ 1803(b), 1601(b)(3)  
5 and 4101(c), to a sentence of a minimum of no jail time to a maximum of one (1) year; and to a  
6 minimum of no fine to a maximum of \$1,000. For the crime of misdemeanor theft, Defendant is  
7 subject, pursuant to 6 CMC § 1601(b)(3) and 6 CMC § 4101(c), to a sentence of a minimum of no  
8 jail time to a maximum of one (1) year; and to a minimum of no fine to a maximum of \$1,000.  
9

10 **SENTENCE**

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12 In this case, the victim of these crimes is a private citizen operating a store. The store  
13 happens to be attached to the victim's private home as well. The facts show that the Defendant and  
14 his accomplice entered the store by breaking into the victim's bedroom and literally into the victim's  
15 kitchen at night time. It is this Court's opinion that the Commonwealth Legislature purposely made  
16 the punishment of burglarizing a home at night punishable by not more than ten years, which is  
17 twice the punishment for the crime of a burglary of any other building, to deter people from  
18 committing this crime because it creates a high probability of someone getting seriously injured,  
19 even if there is no prior intent to inflict physical injury. Fortunately for the victim and the  
20 Defendant, the victim and her family were not at home at the time of the burglary and nobody was  
21 injured.  
22

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24 Another aggravating point in this case against the Defendant is the fact that when the  
25 Defendant and his accomplice entered the store, the Defendant and his accomplice took cigarettes,  
26 liquor, beer, and even butane. The Defendant stole things not to support himself for survival, but  
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1 “to do something exciting” and to satisfy his vices. He disregarded the sanctity of the victim’s home  
2 to get to his quick butane high and to get his alcohol and cigarettes, all addictive materials. This is  
3 unacceptable and the Defendant needs to be taught a very important lesson.  
4

5 Having reviewed the Pre-Sentence Investigation Report, the Court recognizes and considers  
6 the troubled upbringing the Defendant has endured. He comes from a broken home where both of  
7 his parents are drug addicts. His father is presently in prison for a drug-related conviction and his  
8 mother’s conduct resulted in the Defendant and his siblings being placed in foster homes in Idaho  
9 when he was younger. In addition, the Defendant has expressed his remorse and sincere apology  
10 to both the victim and the Court, and accepts responsibility of his action. At the sentencing hearing,  
11 the Defendant stated that he understands his addiction to sniffing gas led him to commit these  
12 crimes, and that what he did was wrong. The Court accepts the Defendant’s sincere statements as  
13 an indication of his efforts toward rehabilitation.  
14

15 However, this Court takes special note of the fact that Defendant Davis Clyde P. Diaz is not  
16 a stranger to the criminal justice system. He previously pleaded guilty to an earlier crime which he  
17 committed with another defendant. In Criminal Case No. 03-0073, a co-defendant pleaded guilty  
18 to burglary, and on February 23, 2004, Diaz pleaded guilty to the crime of criminal mischief.  
19 Defendant Diaz committed the crimes in this case *on January 17, 2004, while the prior criminal*  
20 *case was still pending and the Defendant was charged with the crimes of burglary, criminal*  
21 *mischief, and conspiracy.* In the prior criminal case, he was facing the possibility of five years  
22 imprisonment for burglary, yet he engaged in the same criminal conduct again. To make matters  
23 worse, the other person involved in this burglary case was a minor at the time of this crime. As the  
24 adult relative, the Defendant should have known better and should have guided his younger relative  
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1 in the right direction.

2 Although the Defendant is single without any children and without either parent to assist  
3 him, it does not mean he should not care about what happens to himself or others. If he cannot  
4 restrain himself for his own sake, this Court must act to restrain him in order to protect the  
5 community.  
6

7 The fact that the Defendant may have a serious substance abuse problem concerns the Court  
8 about the Defendant's ability to learn from his mistakes and avoid committing any future crimes.  
9 The defense argues that a sentence to time served is adequate punishment for the Defendant.  
10 Although the Defendant has already served six months in prison for this case, the sentence in this  
11 case is intended to ensure that the Defendant clearly understands the seriousness of his offenses, to  
12 deter him from committing any future crimes, and to help him receive the assistance he needs to  
13 accomplish the two. By taking away his freedom to be a part of this community, this Court is  
14 impressing on the Defendant to learn to appreciate the freedom he had, and the freedom he will get  
15 when he is released from prison. At the same time, this Court is not invoking its power to restrict  
16 the Defendant from being granted parole by the Board of Parole. The Court will allow the  
17 Defendant to rehabilitate himself and to prove to the Board of Parole that he is worthy of being  
18 released sooner than the entire unsuspended jail sentence imposed herein.  
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21 Finally, let this jail sentence deter other individuals from committing this dangerous and  
22 serious crime of burglary. The damage inflicted is not limited to the owners of the business, but also  
23 the customers who may potentially lose the convenience of a nearby store. As well, the damage is  
24 not limited to the owner of the household entered, but extends to other homeowners who fear  
25 becoming the next victim.  
26

1 In view of the foregoing facts, this Court hereby sentences Defendant Davis Clyde P. Diaz  
2 as follows:

- 3 1. For **Count I, Burglary**, in violation of 6 CMC § 1801(a), Defendant shall be  
4 imprisoned for a term of **five (5) years, all suspended except for two years**, with  
5 credit for time served since his arrest on February 27, 2004;
- 6 2. For **Count III, Criminal Mischief**, in violation of 6 CMC § 1803(a), Defendant  
7 shall be imprisoned for a term of **one (1) year**, with credit for time served since his  
8 arrest on February 27, 2004;
- 9 3. For **Count IV, Misdemeanor Theft**, in violation of 6 CMC § 1601(a), Defendant  
10 shall be imprisoned for a term of one (1) year, with credit for time served since his  
11 arrest on February 27, 2004;
- 12 4. All of these sentences are to run concurrent with each other.

13 These sentences are subject to the following terms and conditions:

- 14 1. The Defendant shall be on supervised probation, under the direction and supervision  
15 of the Office of Adult Probation, during the suspended sentence. The Defendant  
16 shall observe all directives imposed by the Office of Adult Probation;
- 17 2. The Defendant shall write a letter of apology to the victim in this case, Ms. Delia  
18 Kristobol, and submit it to his Probation Officer within thirty days;
- 19 3. The Defendant shall pay restitution to the victim in the amount of \$920.57;
- 20 4. The Defendant shall submit himself for an evaluation by the Community Guidance  
21 Center (“CGC”) within thirty days after serving all his prison term to determine if  
22 he needs any counseling and/or treatment, and shall comply with any  
23 recommendation by CGC;
- 24 5. The Defendant shall seek and maintain full-time employment (“seek” is defined as  
25 submitting at least five job applications per week, and “full-time” is defined as  
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1 working at least 32 hours per week);

2 6. The Defendant shall perform one hundred (100) hours of community work service  
3 at a minimum of 20 hours per month if he is unemployed, and a minimum of 16  
4 hours per month if he is employed, beginning no later than thirty days after serving  
5 all his prison term;

6  
7 7. The Defendant shall pay a fine of \$300;

8 8. The Defendant shall pay the \$100 court assessment fee within 30 days of his  
9 sentence pursuant to 6 CMC § 4119(a)(3)(A);

10 9. The Defendant shall pay an annual probation fee of \$100 pursuant to 6 CMC §  
11 4113(g), at a minimum rate to be determined by the probation officer;

12 10. The Defendant shall obey all Commonwealth, Federal, and State laws (minor traffic  
13 infractions excluded).  
14

15 Failure to comply with any of the above terms and conditions shall constitute a violation of  
16 the terms and conditions of the suspended sentence and shall subject the Defendant to revocation  
17 proceedings.  
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19 After the sentence was pronounced, the Defendant was advised that he has the right to appeal  
20 the Court's sentence within thirty (30) days from the date of the entry of this order.

21 Pursuant to the Plea Agreement, the Commonwealth is barred from moving to revoke  
22 Defendant's probation in Criminal Case No. 03-0073 based on the facts of this criminal case.  
23

24 IT IS SO ORDERED this 25th day of August 2004.

25  
26 /s/ \_\_\_\_\_  
27 RAMONA V. MANGLONA, Associate Judge