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FOR PUBLICATION

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

COMMONWEALTH OF THE NORTHERN,
MARIANA ISLANDS,

Plaintiff,

v.

TESSFOUR MICHAEL,

Defendant.

CRIMINAL CASE NO. 02-0170(E)
CRIMINAL CASE NO. 02-0219(E)

**AMENDED ORDER
REVOKING PROBATION**

THIS MATTER came before the Court for Sentencing on Revocation on September 23, 2004, at 9:00 a.m. in Courtroom 223A of the Guma Hustisia Building, pursuant to the Government's Motion to Revoke Probation that was heard on September 20, 2004. The Government was represented by Assistant Attorney General, David Hutton. The Defendant appeared with counsel Joseph A. Arriola, Esq.

On September 20, 2004, the Court found that the evidence and facts were such as reasonably satisfied this Court by a preponderance of the evidence that the Defendant's conduct has not been as required by the conditions of probation, to wit, he has violated CNMI laws and on that basis revoked his probation pursuant to 6 CMC § 4113.

SENTENCE

Defendant was charged on June 3, 2002, in Criminal Case No. 02-0170 with Criminal Mischief and again charged on July 31, 2002 in Criminal Case No. 02-0219 with the crimes of Burglary, Theft and Received Stolen Property.

A Judgment and Commitment order based on a plea agreement was entered on June 6, 2003,

1 and the sentence was a five (5) year probation term and a three (3) year jail sentence all suspended
2 except four (4) months.

3 Recent charges have been filed in Criminal Case No. 03-0413 on December 30, 2003,
4 whereby Defendant has been charged with Assault with a Dangerous Weapon, Aggravated Assault
5 and Battery, Assault and Battery, and Disturbing the Peace. These recent charges served as the basis
6 for the Government's Motion to Revoke Probation. Although the probation officer testified that
7 Defendant had not once reported to probation as required, the Court cannot, and did not, use that as
8 a basis for revocation since the Defendant was not given notice regarding those allegations. However,
9 the Court may use such undisputed testimony for purposes of sentencing.

10 In placing a criminal on probation, "an act of clemency and grace," the state takes a risk that
11 the probationer may commit additional antisocial acts. *California v. Hainline*, 28 P.2d 16, 17 (1933).
12 Where probation fails as a rehabilitative device, as evidenced by the probationer's failure to abide by
13 the probation conditions, the state has a great interest in being able to imprison the probationer. We
14 cannot afford to have poor-risk convicted criminals free in society, posing a potential danger to the
15 community.

16 Revocation deprives an individual, not of the absolute liberty to which every citizen is entitled,
17 but only of the conditional liberty properly dependent on observance of special restrictions. Defendant
18 here did not comply with such restrictions and conditions of his probation and in view of the record
19 the Court finds that probation has failed as feasible a rehabilitative device for this Defendant.

20 Pursuant to 6 CMC § 4113(c), "[u]pon the revocation of probation, the court may then impose
21 any sentence which may have initially been imposed had the court not suspended imposition of
22 sentence in the first instance."

23 The Court having heard the testimony of the witnesses and arguments of counsel finds that the
24 interest of justice will best be served by sentencing Defendant to serve the remaining sentence he
25 could have received in this matter had the sentence not been suspended.

26 **IT IS HEREBY ORDERED** as follows:

- 27 1. The Defendant shall serve the **thirty-two (32)** months of the remaining thirty-six (36)

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months of his suspended sentence. The five(5) year probation period will remain unchanged;

2. The Defendant shall report to the Division of Corrections on September 24, 2004, before 5:00 p.m. to serve his sentence.

ENTERED this September 24, 2004.

/s/
DAVID A. WISEMAN, Associate Judge