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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 ACTION NO. 05-0141C**
9 **NORTHERN MARIANA ISLANDS,**)
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Plaintiff,

vs.

MICHAEL C. DIAZ,

Defendant.

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14 **I. INTRODUCTION**

15 THIS MATTER came before the Court for a hearing on August 10, 2005, at 9:00 a.m. in
16 courtroom 220A, to consider Plaintiff's Motion to Dismiss. The Commonwealth was
17 represented by Chief Prosecutor Jeffrey Moots. Defendant appeared with counsel, Assistant
18 Public Defender Angela M. Krueger. The Court, having reviewed the pleadings and the
19 memorandum filed, and having heard the arguments of counsel, now renders its written decision.

20 **II. PROCEDURAL HISTORY**

21 On May 18, 2005, the Commonwealth, through the Chief Prosecutor, charged the
22 Defendant with the misdemeanor crime of Assault and Battery for what appears to be a domestic
23 violence incident that occurred on or about October 5, 2003. About two months after the filing
24 of the charge, on July 13, 2005, this Court set the case for a bench trial scheduled to begin on

1 September 13, 2005, at 9:00 a.m. The next day, a Pretrial Order was issued setting forth the
2 procedural deadlines to be followed by the parties in preparation for trial, including a deadline
3 for the exchange of discovery materials. Less than three months after filing the Information, and
4 more than a month prior to the trial date, the Commonwealth, through the same Chief Prosecutor,
5 filed an *ex parte* motion to dismiss this case *with prejudice* pursuant to Rule 48(a) of the
6 Commonwealth Rules of Criminal Procedure. In support of its motion, the Commonwealth
7 stated that the basis for the dismissal is “for the government’s failure to comply with the pre-trial
8 order regarding Discovery.” Based on this fact alone, the Commonwealth asserted that “it
9 believes it is in the interest of justice to dismiss the case with prejudice.” Pursuant to Rule 48(a),
10 which requires the Government to obtain “leave of court” to file a dismissal of an information or
11 complaint, this Court *sua sponte* set this matter for a status conference.¹ Thereafter, the
12 Defendant filed his brief in support of the Government’s motion to dismiss this case with
13 prejudice.

12 III. ANALYSIS

13 Because the Government has decided, in its discretion, to move to dismiss this case *with*
14 *prejudice* pursuant to Rule 48(a), the Defendant supports the motion. Furthermore, in support of
15 the Government’s motion to dismiss for its “failure to comply with the pre-trial order regarding
16 Discovery,” the Defendant states that he has received no discovery, despite his discovery request.
17 However, in his own distinction between Com. R. Crim. P. 48(b), which allows *the Court* to
18 dismiss a case for the government’s failure to prosecute, from Rule 16(d)(2), which *authorizes*
19 “*sanctions*” for discovery violations, Defendant acknowledges that “sanctions” are appropriate
20 for discovery violations. In fact, Defendant has filed numerous pre-trial motions in this case,
21 including his *Motion for Sanctions for Government’s Failure to Comply with Discovery*
22 *Deadlines in Case Management Order (#08)*. Defendant’s own proposed sanctions do not

23 ¹ Rule 48(a) of the Commonwealth Rules of Criminal Procedure provides the mechanism by which the attorney
24 for the Commonwealth may dismiss a criminal case. The relevant part provides as follows: “[t]he attorney for the
government may *by leave of court* file a dismissal of an information . . . and the prosecution shall thereupon
terminate.” Com. R. Crim. P. 48(a) (emphasis added).

1 include a motion to dismiss this case with prejudice. Rather, the Defendant seeks an order of full
2 disclosure of all police reports, police notes, witness interviews by police, and police
3 memoranda. Defendant's motion for sanctions and proposed order was filed on July 22, 2005.
4 Two weeks later, the Government filed the instant motion that results in an even more extreme
5 sanction--- a dismissal with prejudice.

6 Rule 48(a) permits the court to deny a Government dismissal motion, to which a
7 defendant has consented, if the motion is prompted by considerations clearly contrary to the
8 public interest. *See Rinaldi v. United States*, 434 U.S. 22, 30 n.15, 98 S. Ct. 81, 86 n.15, 54 L.
9 Ed. 2d 207, 209 n.15 (1977) (per curiam) (interpreting the counterpart Federal rule). Based on
10 the procedural facts of this case, this Court initially concluded that the Prosecutor's failure to
11 comply with a procedural discovery deadline *by itself* is an improper consideration to grant a
12 dismissal *with prejudice*. However, in the hearing on this matter, the Chief Prosecutor provided
13 additional factual information in support of the motion that convinces this Court that granting the
14 Commonwealth's motion is proper. In particular, the Attorney General's Office, through the
15 Chief Prosecutor, has represented that it made the decision to terminate the prosecution of this
16 criminal case based on its careful review of how to best use its limited resources.² In addition,
17 the Commonwealth has determined that the parties involved: Defendant and the alleged victim
18 have since reconciled.

19 IV. CONCLUSION

20 Based on the foregoing facts, Plaintiff's motion to dismiss this case with prejudice is
21 hereby GRANTED.

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23 ² In this case, the Defendant has filed 18 different motions. The attorney for the Government has chosen to
24 terminate the prosecution of this case rather than expend the Attorney General's resources responding to these
numerous motions that it concedes are a product of the Prosecution's own mishandling of the case. This Court is
deeply troubled by this fact, but finds that it must defer to the Prosecution's decision on how to manage its limited
resources in line with the separation of powers doctrine.

1 SO ORDERED this 10th day of August 2005.

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5 RAMONA V. MANGLONA, Associate Judge
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