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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,

vs.

HUA SHANG and ZHOU XU,

Defendants.

CRIMINAL CASE NO. 05-0029(E)

**JUDGMENT AND  
COMMITMENT ORDER  
AS TO DEFENDANT  
ZHOU XU**

This matter came before the Court on August 16<sup>th</sup>, 2005 at 9:00 a.m. for a hearing on defendants' motion to suppress defendant's statements made to the police. The jury trial in this matter was scheduled for August 22, 2005. Defendant informed the court that he received a plea offer from the Government and needed time to discuss it with his client. The court continued the hearing to 1:30 p.m. and at that time the parties presented to the court a signed plea agreement for this defendant, Zhou Xu's and a Change of Plea was heard. The Government was represented by Assistant Attorney General, Rebecca Warfield, and the Defendant Zhou Xu appeared with counsel, Joey P. San Nicolas, Esq. and Dennis Tse, Interpreter.

It is this court's general policy not to accept a negotiated plea so close to trial (3 working days). Jury summons have or are in the process of being served, the court's schedule has deferred and preempted other court business for the week, and several other arrangements and schedules have been made to accommodate the week or so set aside for the jury trial. All those important arrangements get upset and, in several instances, result in substantial inconvenience to the court

1 and others. The Plea Agreement reached by the parties could have and should have been dealt  
2 with sometime prior to 3 working days before trial. The court does acknowledge the bargaining  
3 pressure and reality of settlement that does prevail as the trial gets closer to reality, however, such  
4 factor does not outweigh the many other consequences that the court must deal with in canceling  
5 a jury trial so close to the 11<sup>th</sup> hour.

6 The court believes an exception is warranted in this case in view of the fact that  
7 defendant's counsel, Joey San Nicolas, came into the case at a late date in the proceedings taking  
8 the case over from defendant's previous attorney.

9 The court, therefore, notwithstanding the foregoing policy of this court, which all counsel  
10 practicing before this court should take notice of, has allowed the Plea Agreement procedure in  
11 this case to proceed.

12 At the outset of the hearing, the Court was advised through counsel, that the Defendant  
13 will enter a plea of "**Guilty**" to the offense of **Illegal Possession of Controlled Substance** as  
14 charged in **Counts II, IV and VI** of the Information, in violation of **6 CMC § 2142(a)**. The  
15 Government moved and the Court granted dismissal of all other Counts in the Information.

#### 16 17 **ADVISEMENT AND WAIVER OF RIGHTS**

18 The Defendant was then advised of his constitutional rights and the consequences of a  
19 plea of Guilty. The Defendant was further advised of the maximum possible penalty of the  
20 offense and any minimum penalty required by the statute. The Defendant waived his rights and  
21 entered a plea of "**Guilty**" to the offense of **Illegal Possession of Controlled Substance**, in  
22 violation of **6 CMC § 2142(a)**, as charged in **Counts II, IV and VI**.

#### 23 24 **ACCEPTANCE OF PLEA OF GUILTY**

25 The Court accepted Defendant's plea of Guilty to the offense after finding that (1) the  
26 Defendant's decision to plead Guilty is freely, voluntarily, and intelligently made; (2) he has had  
27 the advice of competent counsel whom he said he was satisfied with; (3) he understood the

1 consequences of his plea of Guilty; and, (4) there is a factual basis for the plea of Guilty.  
2 Accordingly,

3  
4 **ADJUDICATION OF GUILT**

5 **IT IS HEREBY ADJUDGED AND DECREED** that Defendant, **Zhou Xu**, is "**Guilty**"  
6 of the offense of **Illegal Possession of Controlled Substance**, in violation of **6 CMC § 2142(a)**,  
7 as charged in **Counts II, IV and VI**.

8  
9 **SENTENCE**

10 After considering the facts of this case, the recommendations of counsel, the Court hereby  
11 sentences the Defendant as follows:

- 12 1. The Defendant shall be sentenced to imprisonment for five (5) years on each of  
13 the counts for a total of fifteen (15) years, to be served concurrently, all  
14 suspended, except five (5) years with credit for time served, since February 17,  
15 2005, under the following conditions:
  - 16 a. The Defendant will be on supervised probation for ten (10) years, under  
17 the direction and supervision of the Office of Adult Probation. The  
18 Defendant will observe all directives imposed by the Office of Adult  
19 Probation;
  - 20 b. The Defendant shall report to the Community Guidance Center for an  
21 initial evaluation and undergo any recommended treatment, including  
22 substance abuse issues, under the direction and supervision of the Office  
23 of Adult Probation;
  - 24 c. The Defendant shall not possess or consume alcohol or controlled  
25 substances;
  - 26 d. The Defendant shall perform six hundred (600) hours of Community  
27 Work Service (no conversion to fine) at a minimum rate of five (5) hours

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per month until completed;

- e. The Defendant shall not leave the Commonwealth of the Northern Islands without permission of the Probation Officer;
- f. The Defendant shall notify the Probation Office, immediately of any change in his place of residence;
- g. The Defendant shall follow the Probation Officer's instructions;
- h. The Defendant shall permit the Probation Officer to visit or search his vehicle, place of residence and person;
- i. The Defendant shall report to the Office of Adult Probation as directed;
- j. The Defendant shall comply with the special conditions of probation;
- k. The Defendant shall submit to random/target drug test;
- l. The Defendant shall not possess any illegal firearm(s);
- m. The Defendant shall be deported upon serving the five (5) year, unsuspended portion of the fifteen (15) year sentence;
- n. The Defendant shall pay a fine in the amount of two thousand (\$2,000.00) dollars;
- o. The Defendant will pay an assessment fee of two hundred and fifty (\$250.00) dollars as required by P.L. #11-105;
- p. The Defendant will pay a probation fee of one thousand (\$1,000.00) dollars, as required by P.L. #11-82; and
- q. The Defendant must obey all CNMI and Federal laws. Minor traffic citations shall not constitute a violation of this condition.

The Defendant was further advised that failure to comply with **any** of the above conditions shall constitute a violation of the terms and conditions of the suspended sentence and shall subject the Defendant to revocation proceedings.

The **Jury Trial** set for **August 22, 2005** is hereby **vacated**.

The Defendant is hereby remanded to the Department of Corrections.

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**DATED:** August 23, 2005.

/s/ \_\_\_\_\_  
DAVID A. WISEMAN, Associate Judge

*NOTE:* ANY INCONSISTENCY BETWEEN THIS WRITTEN ORDER AND THE ORAL PRONOUNCEMENT OF SENTENCE IN OPEN COURT WILL BE RESOLVED IN FAVOR OF THIS WRITTEN ORDER. THEREFORE, COUNSEL MUST MOVE THE COURT FOR A CORRECTION OF ANY DISCREPANCY OR IT SHALL BE DEEMED WAIVED.