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2 **For Publication**

3 **IN THE SUPERIOR COURT**
4 **FOR THE**
5 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

6 **COMMONWEALTH OF THE**) **CRIMINAL CASE NO. 06-0160C**
7 **NORTHERN MARIANA ISLANDS,**) **DPS NO: 06-03948**
8)
9 **Plaintiff,**)
10 **vs.**)
11 **LEONA CHARLEY ENRIQUEZ,**) **MEMORANDUM OF DECISION**
12 **(d.o.b. 11/02/1976)**)
13)
14 **Defendant.**)

15
16 **PROCEDURAL BACKGROUND**

17 On July 17, 2006, the Commonwealth filed an Information charging the Defendant, Leona C.
18 Enriquez, with two counts of misdemeanor criminal mischief for an incident that occurred on April 25,
19 2006. The Commonwealth subsequently amended the Information to elevate the first count to a felony
20 offense based on the value of the property damages incurred.

21 After several jury trial settings, the case ultimately went forward with a jury trial on the first
22 count and a bench trial on the second count on July 16, 2007. In the interim, the Fifteenth Northern
23 Marianas Commonwealth Legislature passed Public Law 15-46, the "Probation Reform Act of 2006,"
24 which became law on January 29, 2007.

On July 19, 2007, the jury adjudged Defendant Leona C. Enriquez NOT GUILTY of the felony
offense of Criminal Mischief as charged in Count I of the First Amended Information, and Defendant
was discharged as to this count. For the misdemeanor offense of Criminal Mischief, in violation of 6
CMC § 1803(a)(1), as charged in Count II of the First Amended Information, this Court found that the
Commonwealth met its burden of proof and adjudged the Defendant GUILTY of the crime charged. The

1 Court set the case for a sentencing hearing on September 12, 2007, and ordered the Office of Adult
2 Probation to prepare a pre-sentence investigation report.

3 The sentencing hearing was continued to September 26th, at which time the Defendant objected to
4 the Probation Officer's recommendation to impose a period of three years of probation pursuant to
5 Section 5(b)(1) of Public Law 15-46. The Commonwealth disagreed, and the Court set a briefing
6 schedule and heard arguments on this issue on November 21, 2007.

7 This matter came before the Court for a hearing and sentencing on November 21, 2007. The
8 Commonwealth was represented by Chief Prosecutor Jefferey L. Warfield, Sr. Defendant Leona C.
9 Enriquez appeared with court-appointed counsel, Edward C. Arriola, Esq.

10 ANALYSIS

11 The crime of misdemeanor criminal mischief carries a penalty of not more than one year
12 imprisonment, and not more than a \$1,000 fine. 6 CMC §§ 1803(b), 1601(b)(3), 4101(c). After
13 preparing a thorough pre-sentence investigation report, the Probation Officer recommended a sentence of
14 one year imprisonment with a minimum of 30 days to serve, *plus three years of probation to perform*
15 *certain conditions* pursuant to Public Law 15-46. The Defendant, through counsel, vehemently objected
16 to the three years of probation under the new Public Law 15-46 based on the claim that this would violate
17 Defendant's rights to be free from *ex post facto* punishment.

18 Defendant argues that an extension of probation from one year to three years would violate the *ex*
19 *post facto* provision of article 1, section 1 of the NMI Constitution, which provides that "[n]o law shall
20 be made that is ... an ex post facto law...." and article 1, section 9, clause 3 of the United States
21 Constitution, which provides that "[n]o Bill of Attanider or ex post facto Law shall be passed." *Def's Ex*
22 *Post Facto Mem.* at 2. The Commonwealth, on the other hand, relies on two recently decided
23 unpublished decisions of the Superior Court, *CNMI v. Mangarero*, Cr. Case No. 05-0103, and *CNMI v.*
24

1 Ray, Cr. Case No. 05-0329C, which interpreted the Probation Reform Act, to argue that Public Law 15-
2 46 does not “increase the quantum of punishment.”

3 Article 1, section 10 of the U.S. Constitution prohibits states from passing any *ex post facto* law.
4 The parties are in agreement that the U.S. Supreme Court decision of *Calder v. Bull*, 3 U.S. 386, 3 Dall.
5 386, 1 L.Ed. 648 (1798) governs the law on *ex post facto* law. The Supreme Court in *Calder* defines an
6 *ex post facto* law as:

7 (1) Every law that makes an action done before the passing of the law, and which
was innocent when done, criminal, and punishes such action;

8 (2) every law that aggravates a crime, or makes it greater than it was when
committed;

9 **(3) every law that changes the punishment, and inflicts a greater punishment
than the law annexed to the crime when committed;**

10 (4) every law that alters the legal rules of evidence, and receives less or different
testimony than the law required at the time of the commission of the offense, in order to
11 convict the offender.

12 *Calder v. Bull*, 3 U.S. at 390 (Chase, J.) (emphasis added).

13 The Defendant relies on the third example in the *Calder ex post facto* analysis. As later explained
14 by the U.S. Supreme Court, the *ex post facto* clause is aimed at laws that retroactively alter the definition
15 of crimes or increase the punishment for criminal acts. *California Dept. of Corrections v. Morales*, 514
16 U.S. 499, 504, 115 S.Ct. 1597, 1601, 131 L.Ed.2d 588 (1995).

17 The law in the Commonwealth at the time the Defendant committed the offense limited a criminal
18 sentence to not greater than “the combined length of any prison term plus any suspended portion (and
19 resulting probation) which is to follow the prison term.” *Commonwealth v. Oden*, 3 NMI 186, 198
20 (1992). In *Oden*, the trial court sentenced the defendant to five years probation *after* the defendant
21 served his three-year jail term for a crime punishable by not more than five years imprisonment. *Id.* at
22 197. Our Supreme Court concluded that such a construction of the trial court’s sentence renders the
23 sentence excessive and illegal. *Id.*, 197-198; *Commonwealth v. Yao*, 2007 MP 12, ¶ 19 (one year of
24 probation erroneously exceeded maximum statutory sentence of six months for offense). In this case,

1 this Court concludes that imposing the three-year term of probation for the misdemeanor offense
2 punishable by only one year of imprisonment would be contrary to the law that existed at the time of the
3 offense, as interpreted in *Oden* and *Yao*.

4 Laws affecting the *procedures* related to parole and probation may be held to violate the
5 prohibition on *ex post facto* punishment if they “alter standards” for parole or probation or “create a
6 significant risk of increasing the measure of punishment for the covered offense.” *Garner v. Jones*, 529
7 U.S. 244, 250, 120 S.Ct. 1362, 1367, 146 L.Ed.2d 236 (2000), quoting, *Morales, supra*, 514 U.S. at 509,
8 115 S.Ct. 1597. See *Combs v. Bd. of Parole & Post-Prison Supervision*, 917 P.2d 74 (Or. App. 1996)
9 (imposition of longer parole term rather than the shorter term applicable at the time crime was committed
10 was error). Public Law 15-46 plainly does more than this; it provides for an additional three-year period
11 of probation *following the defendant’s period of incarceration for the offense* that was not part of the
12 maximum possible sentence that could have been imposed at the time the offense was committed.
13 Applying Public Law 15-46 in this case would therefore violate the Defendant’s rights against *ex post*
14 *facto* laws. Accordingly, this Court will not apply Section 5 of Public Law 15-46 (enacting 6 CMC §
15 4105(b)(2)) against the Defendant, but will impose a sentence consistent with the laws of the
16 Commonwealth at the time the offense was committed on April 25, 2006.

17 **SO ORDERED** this 29th day of November, 2007.

18
19 /S/ _____
20 RAMONA V. MANGLOÑA, Associate Judge