

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOR PUBLICATION

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

COMMONWEALTH OF THE NORTHERN)
MARIANA ISLANDS,)
)
Plaintiff,)
)
v.)
)
VICENTE T. ALDAN,)
D.O.B. 04/04/1957)
)
Defendant.)

CRIMINAL CASE NO. 09-0103T
D.P.S. CASE NO. 09-000272T

ORDER RE: CONTEMPT

I. INTRODUCTION

THIS MATTER commenced on May 7, 2010 pursuant to the Commonwealth’s Motion to Show Cause and was completed on May 13, 2010. The Government was represented by Assistant Attorney General Brian Gallagher. The Defendant appeared with counsel, Joaquin DLG. Torres, Esq. The purpose of the hearing was to provide Vicente T. Aldan (“Defendant”) with an opportunity to show cause why he should not be held in contempt of Court for not complying with this Court’s Order requiring him to turn over the gun used in the commission of the crime he pled guilty to. After considering the oral arguments of the parties, legal authorities, and the material facts, the Court renders its ruling below.

For the reasons discussed below, the Court finds that Defendant Aldan has not provided the Court with a credible explanation of why he has failed to comply with this Court’s Orders of November 9, 2009 and April 15, 2010, both of which required him to turn over the said gun, and is therefore, held in CONTEMPT of Court.

1 **II. SYNOPSIS**

2 This matter initially came before the Court on November 3, 2009 for a Change of Plea, where
3 Defendant pled guilty to Assault “crime of domestic violence” as charged in Count I of the
4 Information, in violation of 1 CMC § 1461(a)(1). During the hearing, both parties entered into a Plea
5 Agreement dismissing two counts of the Information, Illegal Possession of a Firearm and Assault
6 with a Dangerous Weapon.

7 On February 2, 2010, the Commonwealth filed a Motion to Vacate the Plea Agreement and
8 to Reinstitute Criminal Charges against Defendant. The stated grounds for its Motion was that the
9 “central consideration of the favorable plea was for Defendant to surrender the firearm that was used
10 in the commission of the crimes charged in the Information...[which] the Defendant has failed to
11 [do].” A hearing was set for March 9, 2009, to hear the Government’s Motion to Vacate the Plea
12 Agreement, however the Court continued the hearing because Defendant’s Counsel was not present
13 as a result of not having been served with said Motion.

14 At the rescheduled hearing on March 23, 2010, Assistant Attorney General George
15 Hasselback appeared on behalf of the Commonwealth and informed the Court that he had been
16 “instructed to withdraw the Motion to Vacate the Plea Agreement.” He also added that he informed
17 Defendant’s Counsel that in view of the intended withdrawal of said motion that he need not appear.
18 The Court did not accept this oral request for several reasons and continued the hearing to have
19 Defendant’s counsel present.

20 On March 31, 2010, Assistant Attorney General Brian Gallagher appeared on behalf of the
21 Commonwealth and informed the Court that he had a written statement from Attorney General Ed
22 Buckingham with respect to Mr. Hasselback’s Motion to Vacate the Plea Agreement. Mr. Gallagher
23 read the statement aloud which stated that the Plea Agreement contained certain errors and based on
24 those errors, Mr. Buckingham said that Mr. Hasselback should have spoken with either himself or
25 one of his supervisors before filing the Motion to set aside the Plea Agreement. The Court did not
26 accept this written statement as a proper form of withdrawal nor of a proper method for addressing
27 the Court and ordered the Commonwealth to file a formal motion to withdraw Mr. Hasselback’s said
28 motion, if it still intended to withdraw the motion at that time.

1 On April 8, 2010, the Commonwealth filed two separate motions: (1) a Motion to Vacate
2 the Plea Agreement; and (2) a Motion to Show Cause. In a written decision issued on April 15,
3 2010, the Court Granted both Motions and set a hearing date for the Government’s Motion to Show
4 Cause on May 7, 2010.

5 On May 7, 2010, Assistant Attorney General Elchonon Golob appeared on behalf of the
6 Government to proceed with its Motion to Show Cause. At the outset of the hearing it was stipulated
7 that the handgun had not been surrendered to the Government. Defendant Aldan testified that he had
8 overheard two police officers say that they had recovered a loaded gun when he was being escorted
9 from the police station to the dock in Tinian to be transported to the Department of Corrections in
10 Saipan. Based on that testimony, the Court felt it was necessary to continue the hearing and ordered
11 the Government to issue subpoenas to the Tinian Department of Public Safety’s (hereinafter “DPS”)
12 arresting and escorting officers that were implicated by Defendant’s testimony.

13 On May 12, 2010, the Court heard testimony from eight (8) Tinian police officers.¹ All of
14 whom testified that the gun had never been recovered.² In addition, the escorting officers further
15 testified that they had never spoken to each other about the gun being loaded or recovered when they
16 escorted the Defendant to the dock in Tinian.

17 On May 13, 2010, Defendant’s wife, the former Commissioner of the Department of
18 Corrections, Dolores Aldan took the stand and testified that she escorted Defendant Aldan to Tinian
19 in November 2009 to look for the gun, which was never recovered.³

20
21 **III. STANDARD OF REVIEW**

22 The proof for civil contempt must be clear and convincing. This standard is higher than
23 preponderance of evidence but lower than beyond a reasonable doubt. *Balla v. Idaho State Bd. of*
24

25 ¹The names of the eight (8) Tinian police officers who testified are as follows: Police Captain Sylvester Palacios;
26 Detective Anthony Borja, Detective Melvin Monkeya; Sergeant Elloy Fitial; and Officers Laura Cruz, Kioni Cruz, Jason
Ayuyu, Napu Aldan, and Walter Villagomez.

27 ²The Police did recover two .22 long rifles and three pellet guns, however no handgun was ever recovered.

28 ³The Court would like to note that Mrs. Aldan testified that she escorted Defendant to Tinian as his wife and
as his third party custodian, not in her official capacity as the Commissioner of the DOC.

1 *Corrections*, 869 F.2d 461, 466 (9th Cir. 1989).

2
3 **IV. APPLICABLE LAW**

4 “Contempt of court” is an act or omission that interferes with the administration of justice,
5 through conduct that disobeys judicial orders, shows disregard and disrespect for the authority and
6 dignity of the law, or tends to embarrass, impede or obstruct the court in the performance of its
7 functions. *In re Conemnor Caron*, 110 Ohio Misc.2d 58, 70 (2000). The purpose of the law of
8 contempt is to uphold and ensure the unimpeded and effective administration of justice, secure the
9 dignity of the court, and affirm the fundamental supremacy of the law. *Id.* at 71.

10 The power of contempt is the sole means by which judges can enforce their orders and affirm
11 the rule of law for the benefit of the public, and it may constitute a violation of their sworn duty to
12 fail to exercise it where appropriate. *Id.* Without the power of contempt, courts would be mere
13 boards of arbitration, whose judgments and decrees would be only advisory. *Gompers v Buck’s Stove*
14 *& Range Co.*, 221 U.S. 418, 450 (1911). Furthermore, without the power of contempt, courts would
15 be rendered powerless, no other judicial power could be exercised, and our system of justice would
16 be in continual danger of being thwarted by the lawless. *In re Contemnor Caron*, at 71.

17 Civil contempt flows from the Court’s inherent powers and may be used by a Court to
18 enforce compliance with its lawful orders. *Commonwealth v. Borja*, 3 N.M.I. 156, 164-165 (1992).
19 When a party fails to comply with a Court’s order he may be held in civil contempt if the party was
20 provided with: (1) notice and opportunity to be heard; (2) the opportunity to comply with the order
21 and avoid the penalty; and (3) there is evidence that the court order that was not obeyed was valid.

22 A party is in contempt of court when he “violates a definite and specific court order requiring
23 him to perform or refrain from performing a particular act or acts with knowledge of that order.”
24 *SEC v. Bankers Alliance Corp.*, 881 F. Supp. 673,678 (D.D.C. 1995). Once there has been a prima
25 facie showing that the alleged contemnor did not comply with the court’s orders, the burden shifts
26 to the accused to produce evidence justifying his or her non-compliance. Once the burden shifts, the
27 accused has the burden of proving that it was impossible to comply with a court’s order. “Where
28 compliance is impossible, neither the moving party nor the court has any reason to proceed with the

1 Order, the Court stated that Defendant Aldan would be held in civil contempt if he failed to turn over
2 the weapon or if he failed to provide information as to the whereabouts of said weapon.⁴

3 On numerous occasions, Defendant was ordered to turn over the gun used in the commission
4 of the crime he pled guilty to. However, Defendant, up to and through today's date has still failed
5 to turn over the firearm. Therefore, the burden shifts to Defendant to show by clear and convincing
6 evidence why he has not complied with this Court's Order to do so. If Defendant fails to meet this
7 burden, the Court may hold him in civil contempt. Thus, we turn to the Order to Show Cause to see
8 if Defendant has met his burden.

9 During the proceedings, Defendant was given ample opportunity to show why he had not
10 turned over the gun. Defendant claimed that he was unable to turn over the weapon because: 1.) it
11 was no longer in the area where he placed it on the night of his arrest; and 2.) because he believed
12 that it had already been confiscated by Tinian DPS. The Court will address Defendant's arguments
13 in turn.

14 First, Defendant claimed that he was unable to turn over the weapon because it was no longer
15 in the area where he placed it on the night of his arrest. Defendant testified that after he assaulted
16 his ex-wife, he placed the gun on top of a soil pot and covered it with a blue plastic sheet. Defendant
17 stated that the pot was located under a "bread fruit tree" on his property, however there was
18 conflicting testimony as to where the tree was actually located. At first Defendant stated that it was
19 seventy-five feet from the house, but later he testified that it was only about twenty feet from the
20 house. Regardless of that fact, at the time of Defendant's arrest although Officers searched under
21 the bread fruit tree, no gun was found.

22 In addition, on November 11, 2009, Defendant claims to have gone back to the house to
23 recover the weapon, but asserts that the area under the bread fruit tree had been cleared. However,
24 his testimony is inconsistent regarding the absence of the gun. On one hand, Defendant claims that

25
26 ⁴Although the Government's Motion is captioned as a Motion to Show Cause, the Court would like to note that
27 a necessary result of noncompliance with the Court's Order dated April 15, 2010 is a civil contempt proceeding,
28 regardless of what it is labeled. Therefore, while the Court does acknowledge Defense Counsel's argument as to whether
or not this was in fact a civil contempt proceeding, the Court would like to reiterate and make clear that a Defendant who
does not show by clear and convincing evidence why he has failed to comply with a Court Order may be held in civil
contempt, if the Court so finds.

1 he could not comply with this Court’s Order since the gun was stolen or destroyed, but on the other
2 hand, he claims that Tinian DPS was in possession of his weapon.

3 During the Order to Show Cause proceedings, Defendant testified that Tinian police officers
4 had the gun, yet he never made any effort whatsoever to locate the gun from them. In fact, his
5 actions show otherwise. Instead of going to the Tinian police station to locate the gun on November
6 11, 2009, which would have been consistent with his testimony that Tinian DPS had the gun,
7 Defendant went back to his house to look for the weapon. Afterward, Defendant made no attempt
8 to secure the weapon from Tinian police officers.

9 Additionally, at the change of plea hearing on November 3, 2009, Defendant represented to
10 the Court that he was still in possession of the weapon used in the commission of the crime he pled
11 guilty to. As part of the favorable plea agreement Defendant stated that he was willing to surrender
12 the gun. However, during the Order to Show Cause proceedings, Defendant testified that at the time
13 he made these representations to the Court he believed that the gun had already been confiscated by
14 Tinian Authorities. Defendant based his claim on a conversation he overheard between Officer
15 Villagomez and another officer at the time he was being transported from the police station to the
16 dock for transport to Saipan. However, Officer Villagomez refutes this testimony stating that he did
17 not transport Defendant Aldan to the port on the day of the arrest nor did he ever make any such
18 statement. In fact, the two transporting officers, Officer Kioni Cruz and Officer Laura Cruz, both
19 testified that at the time they transported Defendant to the dock there was no discussion as to whether
20 or not the gun had been recovered or was loaded. Indeed, when Officer Cruz was asked by
21 Defendant’s attorney, “was Defendant lying to the Court when he testified about this issue,” Officer
22 Cruz replied, “yes”.

23 Therefore, the Court is not persuaded by Defendant’s testimony since no supporting evidence
24 has been presented to this Court to corroborate Defendant’s story, which is disputed by the police
25 officers. In addition, both Defendant’s justifications for not being able to turn over the weapon
26 conflict with one another since at the time he entered into the plea agreement, Defendant stated that
27 he would turn over the gun, however later, Defendant testified that the weapon was not in his
28 possession even at the time he made this promise to the Court but instead was in the possession of

1 Tinian DPS.⁵ Therefore, the Court does not find Defendant's testimony credible and he has not
2 shown by clear and convincing evidence why he has failed to turn over the weapon.

3 As previously stated, when a party fails to comply with a Court's order he or she may be held
4 in civil contempt if the party was provided with: (1) notice and opportunity to be heard; (2) the
5 opportunity to comply with the order and avoid the penalty; and (3) there is evidence that the court
6 order that was not obeyed was valid. Here, Defendant Aldan was provided with ample notice and
7 opportunity to be heard during the hearing on the Order to Show Cause, and indeed was heard.
8 Secondly, Defendant had the opportunity to comply with the Order, by either (a) turning over the gun
9 or (b) providing information as to the whereabouts of the gun. Instead, Defendant provided the
10 Court with an incredible story that consisted of a conspiracy between Tinian police officers to hide
11 Defendant's "loaded handgun" from him. Moreover, Defendant failed to support his arguments with
12 any corroborating evidence. Alternatively, we have sworn testimony from eight police officers who
13 contradict his claim about the gun.

14 VI. CONCLUSION

15 The Court finds by clear and convincing evidence that Defendant Aldan is in **CONTEMPT**
16 of this Court's Orders for failing to turn over the weapon used in the commission of the crime he
17 pled guilty to on November 3, 2009, and as set forth in the Judgment of Conviction on November
18 9, 2009.

19 **BASED ON THE FOREGOING,**

20 **IT IS HEREBY ORDERED:** Defendant Vicente T. Aldan be, and hereby is, adjudged in
21 civil contempt of Court for noncompliance with this Court's Orders issued on November 9, 2009
22 and April 15, 2010.

23 **IT IS FURTHER ORDERED:** Defendant is hereby Remanded to the custody of the
24 Department of Corrections. Defendant has the opportunity to purge himself at any point in time by
25 turning over the weapon to authorities or by providing the Court with credible information as to the
26

27
28 ⁵The Court would like to note that Defendant never stated prior to the Order to Show Cause hearing that he
believed the gun was in possession of Tinian DPS.

1 gun's whereabouts.

2 **IT IS FURTHER ORDERED:** Defendant's original sentence and release date are hereby
3 postponed by the length of his imprisonment for civil contempt.

4 **IT IS FURTHER ORDERED:** Pursuant to this Court's Order, Defendant shall not be
5 entitled to any weekend furloughs, work releases, or any other form of temporary release from the
6 Department of Corrections, except for any necessary medical treatment.

7 **SO ORDERED** this 2nd day of June, 2010.

8

9

/s/

David A. Wiseman, Associate Judge

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28