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**FOR PUBLICATION**

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

**COMMONWEALTH OF THE  
NORTHERN MARIANA ISLANDS,**

Plaintiff,

vs.

**STEVEN R. AGUON,**

Defendant.

) **CRIMINAL CASE NO. 01-0063D**

) **ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS  
PLAINTIFF'S MOTION FOR  
REVOCAION OF PROBATION  
FOR  
LACK OF JURISDICTION**

**I. INTRODUCTION**

**THIS MATTER** came before the Court on November 3, 2010 at 2:00 p.m. in Courtroom 220A on Defendant Steven R. Aguon's ("Defendant") Motion to Dismiss Revocation of Probation for Lack of Jurisdiction. Assistant Attorney General Russell Lorring appeared on behalf of the Commonwealth ("Government"). Chief Public Defender Adam Hardwicke appeared with the Defendant. Defendant argues that on May 12, 2006, when Governor Benigno R. Fitial issued an Executive Order that commuted Defendant's sentence to "time served" pursuant to Article III, Section 9(c) of the CNMI Constitution and 6 CMC § 4251, his remaining jail sentences in both Criminal Case Nos. 01-0063 and 02-0289 were commuted, including the probation terms and conditions which required payments for restitution, court costs, and fines. As a result, Defendant claims that this Court lacks jurisdiction to revoke his probation in Criminal Case No. 01-0063.

1 The Government argues: (1) that a court retains jurisdiction before and after a commutation has  
2 been granted; (2) that the Constitution gives the Governor the power to commute criminal convictions  
3 and the courts must give effect to the Governor's intent; and (3) a crime victim has a Constitutional right  
4 to Restitution under CNMI law.

5 Having considered the arguments of counsel, the materials submitted and the applicable law, the  
6 Court is prepared to issue its ruling. For the reasons set forth below, this Court DENIES Defendant's  
7 Motion to Dismiss Revocation of Probation for Lack of Jurisdiction.

## 8 II. PROCEDURAL HISTORY

9 On December 17, 2001, Defendant entered a guilty plea to the charge of voluntary manslaughter  
10 in Criminal Case No. 01-0063 ("Manslaughter" case). He was sentenced to ten years imprisonment, all  
11 suspended except for five years to serve without the possibility of parole, with credit for time served  
12 since his arrest on February 3, 2001. He was further placed on probation for a period of five years, and  
13 was ordered to pay restitution, fine, and court fees.

14 While serving his five years of unsuspended sentence, Defendant escaped from prison. On May  
15 14, 2003, he entered a guilty plea to the charge of escape in Criminal Case No. 02-0289 ("Escape" case).  
16 He was sentenced to serve one year imprisonment to run consecutively to the sentence he was serving  
17 for the Manslaughter case. He was further ordered to pay a court fee and probation fee, and to obey all  
18 laws.

19 On February 3, 2006, Defendant completed his five year unsuspended sentence for the  
20 Manslaughter case. However, he remained in prison to begin serving his one year sentence for the  
21 Escape case.

22 On May 6, 2006, while Defendant was serving his one year imprisonment sentence for the  
23 Escape case and while he was on probation for the Manslaughter case, Governor Benigno R. Fitial  
24 issued an Executive Order that commuted Defendant's sentence to "time served" pursuant to Article III,  
25 Section 9(c) of the CNMI Constitution and 6 CMC § 4251.

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**III. ISSUE**

The sole issue in Defendant's motion is whether the Governor's Executive Order dated May 12, 2006 commuted Defendant's jail sentences, probation terms and conditions including restitution, court costs, and fines, in both Criminal Case No. 01-0063, wherein he pled guilty to Voluntary Manslaughter, and in Criminal Case No. 02-0289, wherein he pled guilty to Escape, such that this Court lacks jurisdiction to entertain a revocation of the suspended prison sentence in the Manslaughter case?

**IV. DISCUSSION**

Article III Section 9(c) of the Commonwealth Constitution provides that the Governor "shall have the power to grant reprieves, commutations and pardons after conviction for offenses after consultation with a board of parole to be established by law." In addition, 6 CMC § 4251 describes the Governor's clemency powers and provides in part:

"A "reprieve" shall postpone the execution of a sentence. A "commutation" substitutes a lighter penalty for that imposed by the court. A "pardon" ends penalties or legal disabilities imposed after conviction. The governor may grant an absolute pardon, which frees the person without any conditions, terminates any punishment and exonerates the person from any guilt or conviction; a conditional pardon, which depends upon the performance of some act by the person for its validity, or which may become void when some specific event transpires; or a partial pardon, which remits only some portion of the punishment, or absolves the person from a portion of the legal consequences, or restores one or more of the person's civil liberties after conviction."

6 CMC § 4251.

Pursuant to Article III Section 9(c) of the Commonwealth Constitution and 6 CMC § 4251, it is clear that the Governor has the authority to grant clemency. As set forth in 6 CMC § 4251, the three types of clemency powers the Governor has are: (1) the power to grant reprieves; (2) the power to grant commutations; and (3) the power to pardon.

Since the judicial interpretation of the exercise of this clemency power appears to be a case of first impression in the Commonwealth, the Court may turn to case law in other jurisdictions for guidance. *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4. The power to pardon falls under one of three

1 general types: absolute, partial, and conditional. An absolute pardon purges all guilt, leaving the  
2 convicted person in the same legal position as if he or she had never been convicted.<sup>1</sup> By contrast, a  
3 partial pardon absolves the convicted person of only some legal consequences, excusing only a portion  
4 of the sentence without extinguishing guilt, whereas, a conditional pardon becomes effective only upon  
5 the happening of a specific act.

6 A commutation, on the other hand, substitutes a lighter penalty for that imposed by the Court,  
7 thereby reducing a judicially imposed sentence.<sup>2</sup> In other words, a commutation of a sentence is the  
8 change of the punishment to which a person is sentenced to a less severe punishment – substitution of a  
9 lesser for a greater punishment – by authority of law.<sup>3</sup> Occasionally the term “commutation” is used to  
10 designate what is more commonly called “good time.”<sup>4</sup> However, unlike pardons, commutations are not  
11 generally regarded as removing the taint of conviction or restoring any lost civil privileges.<sup>5</sup> Keeping  
12 these general principles in mind, the Court will address the Governor’s commutation of Defendant’s  
13 sentence as it relates to these two criminal cases.

14 On May 12, 2006, the Governor commuted the sentence of Steven Aguon to time served. The  
15 Court recognizes the Governor’s authority to commute Defendant’s sentence and the Court does not

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17 <sup>1</sup> *Parker v. State*, 795 P.2d 68 (Kan. 1990) (Dictum: “A [full] pardon is forgiveness and relieves the accused from  
18 the legal consequences of a specific crime.”)

19 <sup>2</sup> *State v. Spady*, 645 N.W.2d 539 (Neb. 2002) (commutation of punishment is substitution of a milder punishment  
20 known to the law for the one inflicted by the court) (omitting internal punctuation); *Bates v. Murphy*, 796 P.2d 116 (Idaho  
1990) (a commutation diminishes the severity of sentence, e.g., shortens the term of punishment).

21 <sup>3</sup> *Biddle v. Perovich*, 274 U.S. 480 (1927); *Colwell v. State*, 919 P.2d 403 (Nev. 1996); *State ex rel. Forbes v.*  
22 *Capertown*, 481 S.E.2d 780 (W. Va. 1996) (although a commutation is not synonymous with a pardon, it is well established  
throughout the United States today that the power to pardon generally encompasses the lesser power to commute).

23 <sup>4</sup> See, e.g., *Rivera v. Commissioner of Correction*, 756 A.2d 1264 (Conn. 2000) (‘Good time’ is a commutation of a  
sentence, affecting an inmate’s parole and discharge dates, thereby serving an important rehabilitative function by allowing  
24 an inmate the opportunity to earn an earlier release for himself...).

25 <sup>5</sup> *Sullivan v. Askew*, 348 So.2d 312 (Fla. 1977).

<sup>6</sup> See, *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272 (1998) (“[P]ardon and commutation decisions have  
not traditionally been the business of courts; as such, they are rarely if ever, appropriate subjects for judicial review.”).

1 wish to disrupt the Governor's commutation. It is well settled law that judges are powerless to interfere  
2 with the executive clemency power.<sup>6</sup> In particular, judges cannot order pardon boards to commute  
3 sentences<sup>7</sup> or amend sentences once commuted by the executive. However, the Court must determine  
4 whether the Governor's commutation herein included Defendant's jail sentences, probation terms and  
5 conditions including restitution, court costs, and fines in both the Manslaughter and Escape cases, or as  
6 to the Escape case only.

7 Defendant argues that the Governor's Executive Order is all encompassing, and commutes both  
8 of Defendant's sentences pronounced in 2001 and 2003. As such, Defendant claims that this Court lacks  
9 jurisdiction to hear the pending Motion to Revoke Probation since nothing remains from either of the  
10 two pending cases other than the convictions. (*See* Def's Reply to Commonwealth's Opp'n to Def's  
11 Motion to Dismiss, pg. 2). The Government contends that the Executive Order only commutes the  
12 remainder of Defendant's jail sentence in the Escape case, thus this Court still has jurisdiction to hear  
13 the pending Motion to Revoke Probation for the Manslaughter case. To reconcile these differences, the  
14 Court will examine the Governor's Executive Order to determine whether or not the Governor  
15 commuted both of Defendant's sentences in May 2006.

16 Paragraph one of the Executive Order recites Defendant's sentence imposed on December 17,  
17 2001, in Criminal Case 01-0063, the Voluntary Manslaughter case. It recognizes the sentence to  
18 include, "ten years imprisonment, to serve five years without possibility of parole or early release and  
19 the remainder suspended, and then placed [Defendant] on probation for five years until the expiration of  
20 the ten-year sentence." *See* Def's Motion to Dismiss, Ex. No. 1, pg. 1 (Executive Order). As part of the  
21 2001 sentence, Defendant was also ordered "to pay restitution for the funeral expenses of the victim  
22 within 18 months of release from the Department of Corrections." *Id.*

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24 <sup>7</sup> *See, Wade v. Singletary*, 696 So.2d 754 (Fla. 1997) (Regardless of executive's reasons for granting or denying  
25 pardon, courts must give effect to the decision and can only interfere if power exercised fraudulently.)

1 Paragraph two of the Executive Order recites Defendant's separate sentence imposed on May 16,  
2 2003, in Criminal Case No. 02-0289, the Escape case. It acknowledges the sentence as "one year  
3 imprisonment to run consecutively to the five-year sentence of imprisonment; and to pay \$25 court  
4 assessment fee and a \$40 probation service fee within 30 days from his release from imprisonment." *Id.*

5 Paragraph three recognizes the fact that on February 6, 2006, three months prior to granting  
6 commutation, Defendant completed his five-year sentence for Voluntary Manslaughter. Paragraph four  
7 further recognizes Defendant's mandatory release date for the Escape sentence, to wit: February 3,  
8 2007. Paragraph five cites a factual basis for granting the commutation, asserting that Defendant  
9 "suffers from a medical condition requiring off-island medical treatment as soon as possible." *Id.*

10 The Governor then recites his constitutional and statutory powers, and the procedures taken to  
11 grant Defendant's commutation. Also included is the Governor's conclusion that Defendant "poses no  
12 danger to society in his current medical condition and that this commutation should be granted for  
13 compassionate and humanitarian reasons and in the public interest." *Id.* at 2. Finally, the Executive  
14 Order concludes with the Governor's exercise of his constitutional and statutory powers to commute  
15 Defendant's sentence with the words: "**hereby commute the sentence of Steven Aguon to time**  
16 **served**".

17 The language "hereby commute the sentence of Steven Aguon to time served" is the basis for  
18 which Defendant now contends that this Court lacks jurisdiction to entertain a revocation of the  
19 suspended prison sentence in the Manslaughter case. Defendant argues that the Court's penalties as  
20 enumerated in the commutation were the convictions, jail sentences, the probation terms and conditions  
21 including restitution, court costs, and fines in both cases.

22 At the outset, the Court notes that although a sentence commonly refers to jail or prison time  
23 ordered after conviction, a sentence also includes all fines, community service, restitution and other  
24 punishment, or terms of probation. In addition, "sentenced to time served" is a sentencing disposition in  
25 which a criminal defendant is sentenced to jail but is credited with time served in an amount equal to the

1 sentence handed down, resulting in the defendant's release from custody. Black's Law Dictionary at  
2 1098 (Abridged 7<sup>th</sup> ed.2000). Accordingly, Defendant Aguon was entitled to and was in fact released  
3 from prison immediately after the Governor signed the commutation order in May, 2006, and he does  
4 not have to serve any of the remaining one year sentence. Defendant now argues that he also does not  
5 have to serve any of the suspended prison sentence from the Manslaughter case, nor perform any of the  
6 conditions of probation. Defendant contends that if any portion of his sentence was to remain intact after  
7 the commutation, it should have been memorialized in the Commutation.

8 In support of his argument, Defendant provided the Court with a copy of the Grant of Executive  
9 Clemency for Lewis Libby by President George W. Bush. (See Def's Reply to Commonwealth's Opp'n  
10 to Def's Motion to Dismiss, pg. 4). It shows that on July 2, 2007, President George W. Bush commuted  
11 Lewis Libby's "**prison terms**...to expire immediately, leaving intact and in effect the two-year term of  
12 supervised release, with all its conditions, and all other components of the sentence." (See Def's Reply,  
13 Ex. 1, pg. 1 (Grant of Executive Clemency)). The Court has also reviewed the January, 2001  
14 Presidential Order wherein President Bill Clinton commuted the sentence of over 20 federal prisoners to  
15 "time served." In every single one of those commutations, the "prison sentence" was commuted to  
16 "time served," leaving intact and in effect the remaining provisions. The Court agrees with Defendant's  
17 argument that if the Governor wished to place conditions on the Defendant, he should have done so  
18 when he commuted Defendant's sentence, which he failed to do in this case.

19 In any event, the most telling aspect of the Governor's commutation may not be what was in the  
20 Executive Order, but instead what was left out. Here, it is clear that the Governor did have the power to  
21 commute Defendant's *sentence* to "time served"; however, the Court does not believe that this affected  
22 Defendant's probation terms and conditions for the 2001 Manslaughter case. Defendant completed his  
23 five-year prison sentence for Voluntary Manslaughter on February 3, 2006 and would have been  
24 released on that same date had he not been sentenced to one year imprisonment for his Escape case, to  
25 run consecutively to his prison sentence. The fact is that Defendant was imprisoned and serving his one

1 year sentence for the Escape case when the Governor signed the Executive Order commuting  
2 Defendant's "sentence" to time served.

3 An interpretation that gives a reasonable, lawful and effective meaning to *all terms* is preferred  
4 to an interpretation which leaves a part unreasonable. RESTATEMENT (SECOND) OF CONTRACTS  
5 § 203 (1979); *Trinity Ventures, Inc. v. Guerrero*, 1 N.M.I. 54 (1990) (emphasis added). Here, the lawful  
6 and effective meaning of the term "sentence" is singular in nature and does not include both of  
7 Defendant's criminal sentences.

8 Although the Governor did not include the term "prison sentence" in his commutation, the Court  
9 believes this is necessarily implied by the term "time served." However, because the commutation order  
10 did not clearly limit the commutation to the "prison sentence" only, the Court can only conclude that the  
11 Governor commuted Defendant's entire sentence in the Escape case, to include the fine and probation  
12 fee. The Governor's Executive Order effectively cut short the Defendant's one year jail sentence and  
13 relieved him of any/all assessment fees and/or fines in the Escape case, thereby discharging Defendant  
14 from paying the \$25 court assessment fee (6 CMC § 4119), and the \$40 probation service fee (6 CMC §  
15 4113). Moreover, since no conditions were placed on Defendant's commutation, none exist. Whether  
16 this was done intentionally or inadvertently would require the Court to opine as to the Governor's intent,  
17 which this Court is not prepared to do. However, if this Court were to look behind the commutation, an  
18 affidavit by the Governor would suffice.

19 In *Lute v. Missouri Board of Probation and Parole*, 218 S.W.3d 431 (Mo. 2007), the Supreme  
20 Court of Missouri examined the effect of the Governor's commutation of two women who were each  
21 convicted of murdering their abusive husbands. The Governor's commutations eliminated from both  
22 inmates' sentences the prohibition against probation or parole, however, the Board of Parole denied  
23 parole, stating that to do otherwise would depreciate the seriousness of the present offense. The  
24 Missouri Supreme Court found that when interpreting the Governor's commutations, the Court must  
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1 give effect to the Governor's intent which can be discerned by an affidavit from that Governor since it is  
2 he, who is the sole author of the document who can resolve any ambiguities.

3 In this case, the Declaration signed by Governor Fitial, on October 29, 2010, in support of the  
4 Commonwealth's opposition to the defendant's motion could therefore be used to determine his intent,  
5 since he was the Governor who commuted Defendant's sentence back in 2006, subject to the  
6 Declaration being notarized or sworn to under penalty of perjury. However, because this Court applied  
7 the plain meaning of the terms of the commutation, the Court need not decipher the Governor's intent.  
8 In addition, the Court disagrees with the Defendant that it is impossible to conclude that the  
9 commutation reduced Defendant's entire sentence in the Escape case to "time served," including his  
10 probation, \$40 probation fee, and \$25 court assessment fee, while leaving the Voluntary Manslaughter  
11 sentence intact. Defendant was subjected to two jail sentences, one for manslaughter, and the other for  
12 escape. The Governor commuted his jail sentence to allow for his immediate release because, according  
13 to the Executive Order, he "suffers from a medical condition requiring off-island medical treatment as  
14 soon as possible." The commutation of the Escape sentence accomplished that purpose; and the  
15 commutation of the Manslaughter sentence was not necessary to secure his release from custody.

16 **V. CONCLUSION**

17 In sum, the Governor's commutation cut short the remainder of Defendant's jail sentence and  
18 relieved him of any/all assessment fees and/or fines in the Escape case. However, the commutation did  
19 not affect the Voluntary Manslaughter case. Consequently, this Court has jurisdiction to hear the  
20 Government's Motion to Revoke Probation since Defendant's five year suspended sentence and  
21 obligation to pay restitution still remain in the Voluntary Manslaughter case. For the reasons stated  
22 above, the Court **DENIES** Defendant's Motion to Dismiss.

23 **IT IS SO ORDERED** this 31<sup>st</sup> day of December, 2010.

24   
25 **RAMONA V. MANGLONA, Associate Judge**