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**FOR PUBLICATION**

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,	)	CRIMINAL CASE NO. 10-0132(E) DPS CASE NO. 10-005641
Plaintiff,	)	
vs.	)	<b>ORDER DENYING DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA AS TO ANGEL JESS SANTOS</b>
IVAN JONES CASTRO,	)	
D.O.B. 03/03/1977	)	
ANGEL JESS SANTOS,	)	
D.O.B. 05/17/1989	)	
JOSEPH C. CAMACHO, JR., and	)	
D.O.B. 02/14/1979,	)	
ALFRED P. HOCOOG,	)	
D.O.B. 08/30/1992	)	
Defendants.	)	

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**I. INTRODUCTION**

**THIS MATTER** came before the Court on May 24, 2011 at 9:00 a.m. in Courtroom 223A for Defendant's Motion to Withdraw his Guilty Plea. The Government was represented by Assistant Attorney General Brian Gallagher. Defendant Angel Jess Santos (hereinafter "Defendant") appeared with his court-appointed counsel, Joseph Camacho.

On April 25, 2011, Defendant filed a Motion to Withdraw his Guilty Plea. The main basis for the Motion was the fact that the Government had not yet filed any new formal charges against the three former co-defendants in this matter. On May 17, 2011, the Government pursuant to a Court ordered schedule, filed an Opposition to Defendant's Motion and on May 24, 2011, Defendant filed a Response to the Government's Opposition. In his Response, Defendant argued that his Motion should be granted because: (1) the Government missed the applicable deadline to respond to Defendant's Motion; and (2) the Attorney General had failed to move forward on the other three co-defendants who were previously charged in this matter.

1 After considering the oral and written arguments of the parties, legal authorities, and the  
2 material facts, the Court denied Defendant's Motion with notice that a written and more detailed  
3 Order will issue and the Court now does so below. For the reasons stated herein, the Court  
4 **DENIES** Defendant's Motion to Withdraw.

5 At the outset, the Court expresses its major concern with respect to a defense counsel in a  
6 criminal case erroneously and recklessly relying on the Rules of Civil Procedure which are totally  
7 inapplicable in a criminal case, and then to use such erroneous basis for wrongfully attacking the  
8 Government for "flaunting the rules."

9 Defendant's first section of his response to the Government's Opposition is titled "The  
10 Government Missed the Deadline to Respond to Defendant's Motion to Withdraw Guilty Plea."  
11 This is based on Defendant's incorrect application of the Civil Rules which apply to civil matters.

12 In a criminal case, it is the Criminal Rules of Procedure that unequivocally apply, and in  
13 particular, Rule 45(d) thereof, that governs the time for filing motions. The Government's filing  
14 under said Rule 45 was timely. However, notwithstanding said applicable criminal rule, Defendant  
15 apparently did not remember nor recall the Court's previous order setting a specific filing schedule  
16 regarding this Motion which the Government timely met.

17 Attorneys practicing before this Court would be well advised to refresh themselves on the  
18 obligations they have to the Court and to the Bar when filing documents under their signature in  
19 Court.

## 20 21 **II. DISCUSSION**

22 On October 7, 2010, Defendant pled guilty to Count IV of the Information to wit:  
23 Conspiracy to Commit Sexual Assault in the First Degree. Pursuant to the plea agreement, the  
24 Court dismissed the remaining five counts in lieu of Defendant's plea. Defendant does not dispute  
25 the fact that he received benefit of the Plea Agreement whereby the crimes of kidnapping, sexual  
26 assault in the first degree, aggravated assault and battery and disturbing the peace were dismissed  
27 upon his plea of guilty. The penalties for these crimes could result in a sentence of life  
28 imprisonment or a total up to 50 years. The obligations of Defendant to cooperate and testify

1 against the former co-defendants was to be a benefit to the Government and if they are not  
2 interested in availing themselves of such benefit that is their prerogative. There is no loss or harm  
3 to Defendant resulting from the Government's forbearance on this matter.

4 Pursuant to the plea agreement, Defendant would face a (40) year term of incarceration, all  
5 suspended except for a maximum of the first (20) years. In addition, Defendant "shall serve no less  
6 than 10 years incarceration, while the Government reserves the right to argue for a period of  
7 incarceration up to 20 years," and the Defendant can argue for a lesser term. On January 25, 2011,  
8 the Government filed a Sentencing Brief recommending that Defendant be sentenced to 18 years,  
9 all suspended, except for a term of 15 years to serve without the possibility of parole.

10 On April 25, 2011, Defendant filed the present Motion to Withdraw his guilty plea arguing  
11 that he would not have entered into the plea agreement had he known that the Government would  
12 be dismissing the case against the other three co-defendants. What Defendant fails to realize is that  
13 Defendant's dislike of the Government's policies is not an adequate basis for withdrawing his plea.  
14 Neither this Court nor any other court has the authority to control who the Government elects to  
15 prosecute. The same follows suit with defense counsel. Such authority is vested strictly in the  
16 Executive Branch. It is quite bold for Defendant to seek to withdraw his plea simply because the  
17 Attorney General's Office has made a decision on whether or not to pursue a case against the other  
18 three co-defendants in this matter. Such decisions are the prerogative of the Executive Branch  
19 through the Office of the Attorney General. Defendant's repeated attacks and criticisms on and of  
20 the Attorney General, through his written and oral arguments, have no basis or merit with respect  
21 to providing any legally recognizable grounds for a withdrawal of a guilty plea.

22 Defendant argues that since the Government has not refiled any charges against the former  
23 co-defendants that he has lost his chance to co-operate with the Government by testifying, and  
24 therefore, cannot use this factor to support an argument of leniency at sentence. That being said,  
25 during sentencing, the Court will take into consideration the fact that the Defendant was prepared  
26 to co-operate and testify for the Government. Absent any new information, the Court will consider  
27 this factor, among others, and allow Defendant to use this argument in any request for leniency  
28 when determining the appropriate length of Defendant's sentence. In addition, the plea agreement

1 provides that the parties may petition the Court for a future reduction of sentence if such future  
2 cooperation by Defendant is performed.

3           Moreover, although Defendant believes that the plea agreement was made pursuant to  
4 11(e)(1)(c) of the N.M.I. R. Crim. P., and notwithstanding that such reference is in the plea  
5 agreement, it is actually pursuant to 11(e)(1)(B). The distinction is that in a 11(e)(1)(c) plea  
6 agreement the Court has no choice but to accept, reject or defer the fixed terms and conditions of  
7 the plea agreement and if it rejects it, the Court must allow the Defendant to withdraw his plea.  
8 However, if the agreement only contains a recommendation regarding sentencing the Court's  
9 acceptance of the agreement does not bind the Court to any particular sentence and Defendant has  
10 no right to withdraw the plea if the Court does not follow the recommendation of the parties.

11           In this plea agreement, both parties agreed they could argue within certain agreed upon  
12 parameters the length of incarceration for Defendant. Such latitude or lack of an exact agreed upon  
13 sentence results in this plea agreement being an 11(e)(1)(B) plea. By way of Defendant's Motion,  
14 however, the distinctions between the two (2) rule sections are not at issue. As stated above, what  
15 is at issue is that Defendant believes that he can withdraw his guilty plea because he doesn't like  
16 the manner in which the Government is handling the case with respect to the former co-defendants.

17           Defendant's Motion leaves much to be desired in that it does not cite any rule of procedure  
18 that governs a withdrawal of a guilty plea, such as N.M.I. R. Crim. P. 32(d), nor does Defendant  
19 refer to any legal authority whatsoever that would support his argument to withdraw the plea.  
20 Additionally, when Defendant changed his plea, he answered several of the Court's questions under  
21 oath. These answers included the fact that Defendant committed the crime.

22           Although the Court has broad discretion to allow a defendant to withdraw a guilty plea if  
23 the motion to withdraw is made before sentencing, defendant must offer a "fair and just reason" for  
24 withdrawal of the plea. *See United States v. Hyde*, 520 U.S. 670 (1997); *United States v. Ruiz*, 257  
25 F.3d 1030 (9<sup>th</sup> Cir. 2001)(en banc)("fair and just reason" standard, rather than "manifest injustice"  
26 standard, applies to defendant seeking to withdraw his guilty plea prior to sentencing...)

1 In determining whether there is a fair and just reason, the court considers the totality of the  
2 circumstances, including: (1) the quality of counsel during the plea<sup>1</sup>; (2) whether the plea was  
3 knowing and voluntary; (3) whether judicial resources would be considered; (4) a defendant's  
4 assertion of innocence<sup>2</sup>; and (5) whether the government would be prejudiced if the defendant were  
5 allowed to withdraw his plea. Examples of "fair and just reasons" to withdraw a plea include, but  
6 are not limited to: intervening decisions by the United States Supreme Court calling into question  
7 the validity of the defendant's indictment<sup>3</sup>, gross misrepresentation by defense counsel for the  
8 potential sentence defendant faced<sup>4</sup>, defense counsel's failure to advise defendant of the potential  
9 basis for a suppression motion<sup>5</sup>, newly-discovered evidence calling into question the validity of the  
10 defendant's plea, lack of factual basis for plea, or the government's admission that it breached the  
11 plea agreement. Defendant has not represented that any of the above factors are applicable to this  
12 case. Mere second thoughts by a Defendant about his plea are not "fair and just reasons" for  
13 withdrawing a plea. *See United States v. Austin*, 413 F.3d 856 (8<sup>th</sup> Cir. 2005).

14 After weighing the enumerated factors, it is clear that withdrawal is not warranted. More  
15 than nine (9) months have lapsed between the plea and Motion to Withdraw. Defendant's alleged  
16 reason for failing to move to withdraw earlier are not an adequate basis for withdrawal. Defendant  
17 has pled guilty to Count IV of the Information and has never maintained his innocence, the guilty  
18 plea was knowingly and voluntarily entered into under oath and all other rights delivered during  
19 the change of plea colloquy were understood and acknowledged by Defendant under oath.

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24 <sup>1</sup> *See United States v. Arteca*, 411 F.3d 315 (2<sup>nd</sup> Cir. 2005).  
25 <sup>2</sup> *See United States v. Hoke*, 569 F.3d 718 (7<sup>th</sup> Cir. 2009).  
26 <sup>3</sup> *See United States v. Ortega-Ascanio*, 376 F.3d 879 (9<sup>th</sup> Cir. 2004).  
27 <sup>4</sup> *See, e.g., United States v. Davis*, 410 F.3d 1122 (9<sup>th</sup> Cir. 2005).  
28 <sup>5</sup> *See United States v. McTiernan*, 546 F.3d 1160 (9<sup>th</sup> Cir. 2008).

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**III. CONCLUSION**

For the foregoing reasons, Defendant's Motion to Withdraw is **DENIED**.

**SO ORDERED** this 26<sup>th</sup> day of May, 2011.

/s/ \_\_\_\_\_

DAVID A. WISEMAN, Associate Judge