

1 FOR PUBLICATION

2013 JUN 28 PM 3: 26

BY: *ADJC*  
DEPARTMENT OF COURT

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

9 COMMONWEALTH OF THE NORTHERN )  
10 MARIANA ISLANDS, )

11 Plaintiff, )

12 v. )

13 PAUL SEMENS, )  
14 D.O.B. 8/29/62 )

15 Defendant. )  
16 )  
17 )

CRIMINAL CASE NO. 13-0166E  
DPS Case No. 13-004442

ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS,

FINDING PROBABLE CAUSE  
FOR CONTEMPT OF COURT

18 I. INTRODUCTION

19 THIS MATTER came before the court on June 27, 2013, at 9:00 a.m. in Courtroom 223A for the  
20 preliminary hearing of Paul Semens ("Defendant"). The Commonwealth of the Northern Mariana Islands ("the  
21 Commonwealth") sought to establish probable cause for one count of contempt and one count of violating an  
22 order of protection. Defendant moved to dismiss both charged counts. The Court denied Defendant's motion  
23 to dismiss as to the count of violating an order of protection, finding probable cause existed. As to the count  
24 of contempt, the Court took the matter under advisement to determine whether criminal contempt is an available  
25 sanction for violation of what could be deemed a probation condition. Defendant was represented by Assistant  
26 Public Defender Eden Schwartz. The Commonwealth was represented by Assistant Attorney General Nicole  
27 Driscoll. After considering the oral arguments of the parties, the Court issues the following decision.  
28

1 **II. DISCUSSION**

2 On April 3, 2013, Defendant pled guilty to one count of contempt for violating a court order of  
3 protection. On April 10, 2013, the court handling the matter issued a judgment and conviction order, accepting  
4 the plea agreement entered into by the parties and setting forth certain terms and conditions. Defendant's  
5 sentence was suspended and he was placed on probation. Defendant was ordered to pay probation fees, to  
6 perform community service, to have no contact with the victim for the period of probation, and to obey all laws  
7 as well as rules of the Office of Adult Probation. The judgement and conviction order warned that failure to  
8 comply with the conditions would constitute a violation of the terms and would subject Defendant to extension  
9 or revocation of probation or contempt of court.

10 Defendant argues the condition in the judgment and conviction order is a condition of probation and  
11 criminal contempt is not an available sanction for violation of a probation condition. Defendant asserts the  
12 power to revoke is imposed by statute and revocation is the only remedy for a probation violation, directing the  
13 Court to several cases outside the CNMI that have held that violation of a probation condition is not punishable  
14 by a separate contempt action.

15 6 CMC § 3307 provides that any person who resists or refuses to comply with a lawful order of the court  
16 is guilty of criminal contempt. The majority of jurisdictions have considered the question of whether a court  
17 can punish a violation of a condition of probation as a contempt of court, and have held, for various reasons, that  
18 criminal contempt is not an available sanction for a violation of a probation condition. *See People v. Johnson*,  
19 20 Cal. App. 4th 106, 111 (Cal. App. 2d Dist. 1993) (holding violation of a condition of probation is not  
20 punishable by a separate contempt action); *Alfred v. State*, 758 P.2d 130, 131-33, (Alaska Ct. App. 1988) (“[A]  
21 court may not invoke its contempt power to punish a defendant for a probation violation, at least when the  
22 defendant has not been warned of this possibility.”) (finding a majority of authorities in agreement with their  
23 view: “Our research reveals only one jurisdiction that permits a court to invoke its contempt power as a sanction  
24 for a violation of a probation condition.”); *State v. Asuncion*, 120 Haw. 312, 321 (Ha. Ct. App. 2009) (reversing  
25 a defendant’s conviction of criminal contempt for violation of a no-contact condition of probation because  
26 criminal contempt was not an available sanction for a violation of a condition of probation as set forth by statute  
27 and finding the majority of jurisdictions in accordance with this view); *Williams v. State*, 72 Md. App. 233, 239  
28 (Md. Spec. App. 1987) (“[A] condition of probation may be enforced only through the power to revoke the

1 probation, not through contempt proceedings.”); *Commonwealth v. Nicely*, 326 S.W.3d 441, 448 (Ky. 2010)  
2 (“[T]he overwhelming majority of jurisdictions that have considered this issue have concluded that holding a  
3 defendant in contempt of court for violating conditions of probation offends fundamental principles of  
4 fairness.”).

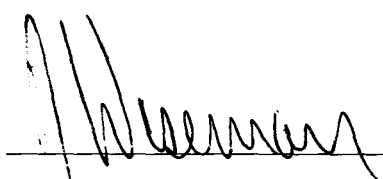
5 A minority of jurisdictions, including several Illinois courts, have held a violation of a condition of  
6 probation can be punished by contempt for various reasons. *See People v. Patrick*, 83 Ill. App.3d 951, 954  
7 (authorizing contempt proceedings as the only sanction for a violation of a term of probation because a court  
8 has inherent contempt power and because the legislative scheme indicated that section of the code was adopted  
9 recognizing inherent contempt power as an added sanction); *Jenney v. Iowa Dist. Court*, 456 N.W.2d 921, 923  
10 (Iowa 1990) (upholding a contempt conviction rendered during a probation revocation proceeding based on an  
11 Iowa statute providing that a defendant in violation of a condition of probation maybe either be held in contempt  
12 and sentenced or probation may be revoked, requiring the defendant to served the sentence imposed or a lesser  
13 sentence); *see also Sumrall v. State Cent. Collection Unit*, 150 Md. App. 290 (Md. Ct. Spec. App. 2003)  
14 (holding a judge may order restitution as a condition of probation or as part of a sentence, making contempt  
15 proceedings proper where restitution is ordered as part of a sentence, and revocation proceedings proper where  
16 it is ordered as a condition of probation or parole).

17 Although it appears to be a general rule that contempt proceedings are not an available sanction for a  
18 violation of a condition of probation, the Court considers whether the provisions that Defendant not have any  
19 contact with the victim was ordered as part of the sentence or as a condition of probation. The order is entitled  
20 “Judgment and Conviction Order”, and the provisions fall under the heading of “Sentence.” The provision  
21 states Defendant shall not have any contact with the victim for the period of probation. A reading of this  
22 provision seems to cut toward a finding that the provision was meant as a condition of probation, and not  
23 ordered separately as part of the sentence.

24 The Court next considers the fact that Defendant was warned in the judgment and conviction order that  
25 violation of any of the conditions would subject him to either revocation or contempt of court, in light of the  
26 holding in *Alfred*, where the court found it could not invoke contempt proceedings for a probation violation, at  
27 least not when the defendant had not been warned of the possibility. *See Alfred*, 758 P.2d at 135. Therefore,  
28 without deciding whether contempt proceedings are proper in addition to revocation proceedings for a violation

1 of a condition of probation, the Court finds that even if revocation proceedings are a possible remedy for such  
2 a violation, it is not an exclusive one, and Defendant was warned of the possibility that violation of the said  
3 April 3, 2013 Order would subject him to extension or revocation of probation or contempt of court. Therefore,  
4 the Court finds probable cause established as to count one for contempt and further finds probable cause that  
5 Defendant may have committed this crime.

6  
7 **So ORDERED** this 28<sup>th</sup> day of June, 2013.

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11 David A. Wiseman, Associate Judge

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