

2013 SEP 20 PM 3: 43

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

COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,

Plaintiff,

v.

PAUL SEMENS,

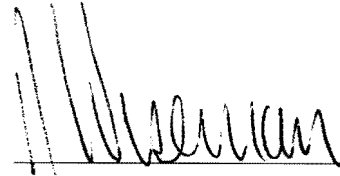
Defendant.

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

NOTICE FOR
PUBLICATION/ORDER

The Court hereby give notice that the **Order Granting Defendant's Motion for Reconsideration** filed on **August 6, 2013 at 10:52 a.m.** is for **PUBLICATION**.

SO ORDERED this 20th day of September, 2013.



David A. Wiseman, Associate Judge

sp [Signature] [Stamp]

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

COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS,

Plaintiff,

v.

PAUL SEMENS,

Defendant.

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

ORDER GRANTING DEFENDANT'S
MOTION FOR RECONSIDERATION

I. INTRODUCTION

THIS MATTER came before the Court on Paul Semens ("Defendant")'s motion for reconsideration filed July 1, 2013. Defendant requests reconsideration of this Court's June 28, 2013 order, which denied Defendant's motion to dismiss and found probable cause for contempt of court. Defendant bases his motion on the Fifth Amendment to the United States Constitution, Article 1, § 4(e) of the Commonwealth Constitution, 6 CMC § 4105, and *Commonwealth v. Eguia*, 2008 MP 17 ¶ 7. Defendant is represented by Assistant Public Defender Eden Schwartz. The Commonwealth of the Northern Mariana Islands ("the Government") was represented by Assistant Attorney General Nicole Driscoll. After considering the written arguments of Defendant, the Court issues the following decision.

II. BACKGROUND

On April 3, 2013, Defendant pled guilty to one count of contempt for violating a court order of protection. On April 10, 2013, the court handling the matter issued a judgment and conviction order ("JCO"),

1 accepting the plea agreement entered into by the parties and setting forth certain terms and conditions of the
2 sentence, including ordering probation and setting forth terms and conditions for probation. One of the
3 conditions was for Defendant to have no contact with the victim for the period of probation. The JCO warned
4 that failure to comply with the conditions would constitute a violation of the terms and would subject Defendant
5 to extension or revocation of probation or contempt of court.

6 On June 18, 2013, Defendant allegedly violated the no-contact order contained in the JCO. On June
7 26, 2013, the Government charged Defendant with one count of criminal contempt in violation of 6 CMC § 3307
8 and one count of violating an order of probation in violation of 6 CMC § 1464(e). At his preliminary hearing
9 on June 27, 2013, Defendant moved to dismiss the criminal contempt charge on the ground that 6 CMC § 4105
10 provides the exclusive remedy for a violation of a condition of probation.

11 The Court took the matter under advisement and on June 28, 2013, issued an order denying Defendant's
12 motion to dismiss. The Court held, without deciding whether contempt proceedings are proper in addition to
13 revocation proceedings for a violation of a probation condition, that revocation proceedings were at least not
14 an exclusive remedy, and that Defendant was on notice because he had been warned of the possibility that
15 violation of the JCO would subject him to extension or revocation of probation or contempt of court. On July
16 1, 2013, Defendant moved the Court to reconsider this decision on the grounds of clear error and manifest
17 injustice. The Court now **GRANTS** Defendant's motion and vacates its June 28, 2013 order for the reasons set
18 forth below.

19 **III. LEGAL STANDARD**

20 A court may reconsider its earlier ruling where there is "an intervening change of controlling law, the
21 availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Eguia*, 2008 MP
22 17 ¶ 7 (citing *Camacho v. J.C. Tenorio Enterprises, Inc.*, 2 NMI 407, 414 (1992)).

23 **IV. DISCUSSION**

24 Defendant argues (1) the Court committed clear error in finding revocation was not the exclusive remedy
25 for a violation of a probation condition because the CNMI Legislature did not provide for criminal contempt
26 as a sanction for a probation violation, therefore the sole remedy for a probation violation is revocation of
27 probation, as provided by statute, and (2) the contempt charge is manifestly unjust because it allows an
28 impermissible enlargement of a validly imposed sentence in violation of double jeopardy.

1 6 CMC § 4105 provides that the remedy for a probation violation is revocation of all or part of the
2 suspended sentence, and in addition, possible extension of probation. Nowhere in the statute does it provide
3 for criminal contempt as a remedy exclusively, or in conjunction with probation revocation. The
4 Commonwealth Supreme Court has not addressed the issue of whether criminal contempt is an available
5 sanction for a violation of a probation condition. Therefore, pursuant to 7 CMC § 3401, the Court looks to the
6 common law in absence of written, local, or customary law.

7 6 CMC § 3307 provides that any person who resists or refuses to comply with a lawful order of the court
8 is guilty of criminal contempt. As this Court found in its June 28, 2013 order, the majority of jurisdictions have
9 considered the question of whether a court can punish a violation of a condition of probation as a contempt of
10 court, and have held, for various reasons, that criminal contempt is not an available sanction for a violation of
11 a probation condition. See *People v. Johnson*, 20 Cal. App. 4th 106, 111 (Cal. App. 2d Dist. 1993) (holding
12 violation of a condition of probation is not punishable by a separate contempt action); *Alfred v. State*, 758 P.2d
13 130, 131-33, (Alaska Ct. App. 1988) (“[A] court may not invoke its contempt power to punish a defendant for
14 a probation violation, at least when the defendant has not been warned of this possibility.”) (finding a majority
15 of authorities in agreement with their view: “Our research reveals only one jurisdiction that permits a court to
16 invoke its contempt power as a sanction for a violation of a probation condition.”); *State v. Asuncion*, 120 Haw.
17 312, 321 (Ha. Ct. App. 2009) (reversing a defendant’s conviction of criminal contempt for violation of a no-
18 contact condition of probation because criminal contempt was not an available sanction for a violation of a
19 condition of probation as set forth by statute and finding the majority of jurisdictions in accordance with this
20 view); *Williams v. State*, 72 Md. App. 233, 239 (Md. Spec. App. 1987) (“[A] condition of probation may be
21 enforced only through the power to revoke the probation, not through contempt proceedings.”); *Commonwealth*
22 *v. Nicely*, 326 S.W.3d 441, 448 (Ky. 2010) (“[T]he overwhelming majority of jurisdictions that have considered
23 this issue have concluded that holding a defendant in contempt of court for violating conditions of probation
24 offends fundamental principles of fairness.”).

25 A minority of jurisdictions have found criminal contempt an appropriate remedy for a violation of a
26 probation condition because such a sanction was provided for by statute. See *People v. Patrick*, 83 Ill. App.3d
27 951, 954 (authorizing contempt proceedings as the only sanction for a violation of a term of probation because
28 a court has inherent contempt power and because the legislative scheme indicated that section of the code was

1 adopted recognizing inherent contempt power as an added sanction); *Jenney v. Iowa Dist. Court*, 456 N.W.2d
2 921, 923 (Iowa 1990) (upholding a contempt conviction rendered during a probation revocation proceeding
3 based on an Iowa statute providing that a defendant in violation of a condition of probation maybe either be held
4 in contempt and sentenced or probation may be revoked.).


5 Because (1) the CNMI statute providing the remedy for violation of a probation condition only provides
6 for revocation, and not criminal contempt, (2) the majority of jurisdictions hold contempt is not an available
7 sanction for a violation of a probation condition, and (3) the minority of jurisdictions hold contempt as a
8 sanction proper when there is a statute authorizing contempt as an available sanction for violation of a probation
9 condition, and the CNMI statute does not provide such a remedy, the Court finds it necessary to change its
10 earlier finding that revocation is not the exclusive remedy for a violation of a probation condition. Because the
11 Court previously correctly found the no-contact order contained in the JCO was a condition of probation,
12 Defendant's alleged violation of the no-contact order was a violation of a probation condition, and not a
13 separately ordered part of his sentence. As such, the proper sanction for such an alleged violation is revocation
14 of probation, and not criminal contempt.

15 **V. CONCLUSION**

16 Consistent with the foregoing opinion, the Court **GRANTS** Defendant's motion for reconsideration,
17 **VACATES** its June 28, 2013 Order Granting Defendant's Motion to Dismiss and Finding Probable Cause for
18 Contempt of Court, and **GRANTS** Defendant's motion to dismiss the count of criminal contempt.

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20 **SO ORDERED** this 6th day of August, 2013.

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David A. Wiseman, Associate Judge