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

COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,

Plaintiff,

v.

PAUL BABAUTA SASAMOTO,
(d.o.b.: 05/11/1975)

Defendant.

Criminal Case No. 10-0091
Criminal Case No. 10-0131

ORDER GRANTING DEFENDANT'S
MOTION TO SET ASIDE CONVICTION
and TERMINATION OF PROBATION

THIS MATTER came before the Court by written Motion dated October 16, 2013. Paul Babauta ("Defendant") was represented by his counsel, Edward Manibusan, Esq. CNMI Probation Officer Simram W. Simram wrote a letter to the Court attesting that Defendant successfully completed all of his suspended sentencing/probation conditions and that Defendant's probation period expired on July 11, 2011.

Factual and Procedural Background

Defendant pleaded guilty to Count V of Criminal Case No. 10-0091, DISTURBING THE PEACE, in violation of 6 CMC § 3101(a), and Count III of Criminal Case No. 10-0131, CRIMINAL TRESPASS, in violation of 6 CMC § 1804(a). All other charges in both cases were dismissed with prejudice. Defendant was sentenced to a total of seven (7) days detention followed by one (1) year of probation. Defendant was further ordered to attend counseling, pay fines and fees, make a donation to Guma Esperanza (the local domestic

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1 violence shelter), and perform one hundred hours of community service. This plea was
2 entered into under the provisions of 6 CMC § 4113.¹

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4 **Legal standard**

5 Defendant moved for expungement and termination of probation under 6 CMC §
6 4113. The pertinent sub-sections of 6 CMC § 4113 are (j) and (k). The Court’s power to
7 terminate probation comes under 6 CMC § 4113(j), which states, “[the court may] terminate
8 the period of probation and discharge the person held.” The Court’s power to expunge is not
9 mentioned in 6 CMC § 4113. The closest subsection on point is 6 CMC § 4113(k), which
10 states, in pertinent part:

11 If it appears that probationer has successfully completed his probation period,
12 the Office of Adult Probation shall file a “Motion to Set Aside Conviction”
13 with the court within thirty days of the end of the probation period. . . . [If]
14 the motion is well taken, the court shall vacate the judgment of conviction
15 and probationer may not be deemed to have been convicted of the crime for
16 any purpose.

16 In dicta, The CNMI Supreme Court has stated that 6 CMC § 4113 does provide for
17 expungement. See *Commonwealth v. Itibus*, 5 N.M.I. 78, 79 (N. Mar. I. 1996); 1997 MP 10,
18 ¶6; *Commonwealth v. Sablan*, 5 N.M.I. 43, 44 (N. Mar. I. 1996); 1996 MP 22, ¶9 (N. Mar. I.
19 1996). The Supreme Court has also implied that if the proper procedures are followed and if
20 the probationer fulfills all of his probation conditions, expungement should be almost
21 automatic. In *Sablan*, the Supreme Court states, “If the defendant complies with all
22 conditions of the suspended imposition of sentence, then the conviction is expunged.”
23 *Sablan*, 5 N.M.I. at 44. However, in order for 6 CMC § 4113 to be applicable, it must have
24 been included in the plea agreement or judgment. “Any consideration of a 6 CMC § 4113
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27 ¹ The provisions of 6 CMC § 4113 were included in the Plea Agreement at the last moment and were hand-
28 written into the Plea Agreement. The Court inadvertently overlooked that condition of the Plea Agreement
when drafting and issuing the Judgment and Commitment Order. The Judgment and Commitment Order has
since been amended.

1 disposition must be specifically agreed to in the plea agreement or it must be unambiguously
2 specified by the Superior Court since it departs from normal sentencing procedures.” *Id.*

3 **Discussion**

4 In this case, Defendant filed a Motion for Expungement of Record. Defendant
5 supported his Motion by citing 6 CMC §4113 but did not include an applicable subsection.
6 No other authority was provided by Defendant. 6 CMC §4113 does not include a provision
7 for expungement. The nearest provision to expungement is 6 CMC §4113(k), which, as
8 stated above, offers a defendant the opportunity to set aside his/her conviction. Thus, the
9 Court shall treat this Motion as a Motion to Set Aside Conviction.² Setting aside a
10 conviction and expungement are different processes, but they can go hand in hand. Setting
11 aside a conviction is a court action whereby a judgment of conviction is vacated and it is
12 reflected in the record. An expungement seeks to “erase” the conviction from the record. In
13 other words, an expungement is “the judicial editing of history.” *US v. Rowland*, 451 F. 3d
14 173, 176 (3rd Cir. 2006).

15 “Although different [jurisdictions] define ‘expungement’ differently, ‘in general
16 when a defendant moves to expunge records, she asks that the court destroy or seal the
17 records of the fact of the defendant’s conviction and not the conviction itself.’” *Id.* (quoting
18 *US v. Crowell*, 374 F. 3d 790, 792 (9th Cir. 2004)).

19 This Court reviewed the legislative history of the 6 CMC §4113 and has not found
20 any authority allowing expungement.³ A review of the case law on the subject indicates that
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24 ² 6 CMC §4113(k) provides that it is the probation office who shall move to set aside a conviction within 30
25 days of the satisfaction of the probationary conditions. Defendant completed his probation nearly two years
26 ago. The Judgment and Commitment Order in this case failed to state that the Plea Agreement was entered
27 into under the provisions of 6 CMC §4113. Because of this oversight, the Office of Adult Probation was
28 unaware that it needed to file this Motion. Therefore, despite the fact that Defendant satisfied his probationary
conditions well over 30 days ago, the Court accepts Defendant’s Motion to Set Aside Judgment as though
timely.

³ The history of 6 CMC §4113 spans several decades beginning on September 1, 1983, when it was drafted as
Public Law 3-71. It was modified on July 21, 1999, by Public Law 11-82; and on May 28, 2004, by Public
Law 14-9. The entire code section was rewritten and reapplied on January 29, 2007, by Public Law 15-46. It
was modified once again on July 13, 2009, by Public Law 16-42.

1 the Supreme Court considers expungement to flow from 6 CMC §4113, but the Supreme
2 Court has not elaborated on how expungement flows from 6 CMC §4113.

3 After extensive research, the Court found no CNMI statute or rule expressly granting
4 a sentencing court the power to expunge criminal records, nor is this power expressly
5 prohibited. The Supreme Court has stated, in dicta, that expungement should follow a
6 suspended sentence and probation entered into under 6 CMC § 4113 but has never expressly
7 held this. See *Sablan*, 5 N.M.I. at 44. In a persuasive opinion, the United States Court of
8 Appeals for the Seventh Circuit found that expungement is an inherent power of the court as
9 it applies to judicially held records but it does not extend to “records maintained by the
10 executive branch of the government”. *US v. Flowers*, 389 F.3d 737, 738 (7th Cir. 2004).
11 The court in *Flowers* analyzed a two-part balancing test in deciding whether a matter should
12 be expunged. The test states, “if the dangers of unwarranted adverse consequences to the
13 individual outweigh the public interest in maintenance of the records, then expunction is
14 appropriate.” *Id.* at 739. The court in *Flowers* stressed that “expungement is an
15 extraordinary remedy.” *Id.* The court went as far as to add content to the balancing test to
16 emphasize this point. “[U]nwarranted adverse consequence’ must be uniquely significant
17 in order to outweigh the strong public interest in maintaining accurate and undoctored
18 records.” *Id.* The unwarranted adverse consequences must be more than employment
19 problems resulting from an arrest or conviction to outweigh the public interest. *Id.* at 740.

20 As there is no statute or case law applying this test in the CNMI, the Court now
21 adopts this test and considers expungement to be an extraordinary remedy and will not apply
22 it here. Because of the extraordinary nature of the remedy, this Court will need a strong
23 showing from Defendant that expungement is appropriate for this case and that his need for
24 expungement outweighs the public interest in maintaining an accurate public record.

25 Defendant has, however, satisfied all of the condition of his probation. Therefore,
26 pursuant to 6 CMC §4113(j), Defendant qualifies for the termination of his probation period.
27 In addition, because Defendant has satisfied all of the conditions of his probation, pursuant
28 to 6 CMC §4113(k), Defendant, through the Office of Adult Probation, may and has, moved

1 this Court to vacate the judgment of conviction. The Commonwealth has the right to object
2 to this Motion if it can “[prove], by a preponderance of the evidence, that [Defendant] has
3 failed to satisfy any condition of the suspended imposition of sentence.” *Id.* The
4 Commonwealth did not object. Thus, pursuant to 6 CMC § 4113(k), Defendant’s Motion to
5 Set Aside Conviction is granted.

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8 **Conclusion**

9 For the foregoing reasons, Defendant’s Motion to Set Aside Conviction is hereby
10 GRANTED. Defendant’s Probation Period is hereby TERMINATED.

11 **IT IS SO ORDERED** this 15th day of November, 2013.

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16 **ROBERTO C. NARAÑA, Presiding Judge**
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