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BY: *Kmb*
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1 **FOR PUBLICATION**

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

8 COMMONWEALTH OF THE NORTHERN)
9 MARIANA ISLANDS,)

10 Plaintiff,)

11 v.)

12 ANTONIO M. ATALIG,)
13 D.O.B. 01/06/1957)

Defendant.)

CRIMINAL CASE NO. 12-0132(E)
DPS CASE NO. 12-005742
CRIMINAL CASE NO. 13-0083(A)
DPS CASE NO. 13-001997

**SENTENCE AND COMMITMENT
ORDER ON CONTEMPT**

14 **I. INTRODUCTION**

15 This matter came before the Court on April 9, 2014 at 1:30 p.m. for a Sentencing Hearing
16 on Contempt as to Defendant **ANTONIO M. ATALIG** in Courtroom 223A. The Government was
17 represented by Assistant Attorney General Heather Barcinas, and Defendant appeared with counsel,
18 Robert Myers, Esq.

19 **II. BACKGROUND**

20 On November 20, 2013, the Defendant in **Criminal Case No. 13-0083A** pled **Guilty** of the
21 offenses of **Assault and Battery (Domestic Violence)** as charged in **Count II** of the Information,
22 in violation of **6 CMC § 1202(a)**; **Disturbing the Peace (Domestic Violence)** as charged in **Counts**
23 **III, IV and V** of the Information, in violation of **6 CMC § 3101(a)**; **Criminal Contempt** as charged
24 in **Count V** of the Information, in violation of **6 CMC § 3307**, and concedes the probation violation
25 in **Criminal Case No. 12-0132E**. The Government moved and the Court granted dismissal of all
26 other Counts in the Information in **Criminal Case No. 13-0083A**.

27 On April 2, 2014 the Defendant was found in contempt of court in violation of 6 CMC §
28 3307.

1 At this time, the Court finds it appropriate to reiterate in part some of its findings stated from
2 the bench on April 2, 2014.

3 **A. Procedural Background**

4 1. The Court accepted Defendant's change of plea on November 20, 2012 whereby
5 Defendant pled guilty to 5 misdemeanors, which included 1 count of Assault and Battery, 1 count
6 of Criminal Contempt, and 3 counts of Disturbing the Peace, wherein he also admitted to violating
7 his probation in Criminal Case No. 12-0132. Defendant was in custody at this time.

8 2. Defendant was sentenced to 325 days with credit for time served which left a balance
9 of 8 months to be served. Defendant requested to be released from his then present incarceration and
10 to commence serving said sentence on January 1, 2014. The Court, for what appeared to be good
11 cause, granted the request.

12 3. Defendant then submitted another request for another extension from January 1, 2014,
13 until February 15, 2014 for Defendant to start serving the 8 remaining months of his sentence.

14 4. The Court reluctantly granted this request again, for what appeared to be good cause,
15 and signed an Order submitted by Defendant, but added that no further extensions would be granted.

16 5. The Court later became aware that Defendant did not report as ordered, on February
17 15, 2014, and also that the date to report in the Order submitted by Defendant was to have him start
18 serving his sentence on February 15, 2015, 1 year later. The Court did not see the gross error of the
19 year 2015 right away, and after the Court's review found it to be a very disturbing error.

20 6. The Court in an Order issued on February 6, 2014 vacated said Order and again
21 ordered Defendant to report to the Department of Corrections (DOC) on February 15, 2014. The
22 Court's Clerk informed him of this new Order and reporting date by telephone. Defendant never
23 picked up the new Order as requested by the Clerk, nor reported as ordered.¹ Thus, Defendant was
24 aware that the reporting date of February 15, 2014 was the date to report as he requested in his
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27 ¹ The Court found the Court Clerk's testimony credible that she informed the Defendant by
28 telephone of the new Order and to report to DOC and to pick up the Order.

1 motion, rather than one for an additional year.²

2 7. The Court issued an Arrest Warrant on February 20, 2014 and the Marshals of the
3 Court along with Probation Officers were unsuccessful in finding Defendant for his arrest despite
4 diligent efforts for several days.

5 8. Subsequent to said Arrest Warrant, on March 7, 2014, 29 days after the Court issued
6 its order of February 6, 2014, and 14 days after the arrest warrant was issued, Defendant reported in
7 the evening to DOC.

8 **B. Failure to Report to DOC to Serve Sentence**

9 On February 25th, 2014, a motion was filed to extend the time for Defendant to start serving
10 his sentence and an accompanying affidavit on Defendant's behalf, claiming that the "typographical"
11 error causing the exceptional circumstances was due to a recording error from his handwritten notes
12 to typewritten form. Defendant further claims he failed to notice the "typo" until January 2014, at
13 which time he assumed the unbelievable position that the Court intended for his 30-day continuance
14 to last for one year and 30 days, instead of informing the Court of the mistake and reporting to DOC
15 by the correct date.

16 Defendant also claims to rely on the language of the Court's Order in good faith, yet
17 Defendant was aware that the Court issued the Order based on his own proposed order which
18 contained the said typo at issue, which the Court found was not a typo, but a change that Defendant
19 deliberately made on the document.

20 Unambiguous words spoken from the bench are controlling, as opposed to erroneous details
21 contained in a written order. *See Commonwealth v. Santos*, 4 N. Mar. I. 348 (1996) (citing *U.S. v.*
22 *Villano*, 816 F.2d 1148, 1453 (1987)).

23 In Defendant's testimony regarding this Court's Order denying a motion filed on February
24 25th requesting an extension of time, he stated that his attorney only told him that the hearing on the

26 ² The Court did not find Defendant's testimony credible, but rather found the witness from
27 quick print to be highly credible in her statement that Defendant gave her a proposed Court Order
28 to type and that he changed the date that was in question in this case.

1 motion was canceled, and that he didn't know about the part ordering him back to prison forthwith
2 or that the motion for another extension was denied.

3 His attorney argued that he only received a fax of only 2 pages of said order. Let us not
4 forget that Defendant is a former attorney with at least 25 years experience. The Court found
5 Defendant's testimony and the attorney's statement incredulous. Here we have a Defendant's liberty
6 at stake and neither the Defendant nor his attorney had the curiosity, will, motivation, or past
7 attorney experience to find out what the full Order stated or to obtain a complete copy of it.

8 For an attorney to rest on a 2 page fax and not be curious to see the rest of the Order, as to
9 if it was even signed, who signed it, and what else is stated such as the denial of his motion and
10 reporting order for his client, and that he would not seek out the complete Order is incredulous at
11 the very least. The Court also took judicial notice that all Court documents in criminal cases are
12 served in the attorney's Court box.

13 For reasons the Court will place on the record shortly, the Court deems that Defendant most
14 likely has been untruthful to the Court in this matter.

15 The Court has now announced its findings of fact in this case and by doing so hereby
16 incorporates its detailed findings made from the bench on April 2, 2014.

17 **III. SENTENCE**

18 The sentencing of an individual convicted of a crime is perhaps one of the most important
19 functions in the criminal justice system. It is my responsibility to perform such task. The heavy
20 burden on the Court is a reflection of the importance of the sentence to the public interest.

21 **A. Sentencing Considerations**

22 In sentencing an individual, the Court must consider the protection of the public, the rights
23 of victims and the gravity of the crime, and its consequences. The Court must also consider the
24 background and record of the Defendant and give serious consideration to the goals of sentencing
25 and assure the ends of justice. In addition, the Court has the unfettered discretion to consider any
26 information, past or present, so long as it has a reliable basis.

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1 **1. Underlying Criminal Case**

2 The criminal case for which Defendant was sentenced in this related matter was the third
3 criminal case over the last decade or so where he caused physical, verbal, and other abuse to his wife
4 and kids. The present case also showed Defendant’s disrespect for the Court’s orders in violating
5 the previous criminal case orders. The abuse got so terrible and dangerous for the family that they
6 recently moved far away from Defendant to the east coast of the U.S.

7 **2. Estate of Angel Maliti**

8 The Defendant has carried on acts of untruthfulness, deception and chicanery and outright
9 disrespect for Court orders, for at least the last seven years, beginning with the Maliti Estate. In that
10 matter, Defendant was ordered to pay back the 1.1 million dollars he wrongfully took from the estate.
11 He refused to do so and eventually after several hearings and opportunities to comply with the
12 Court’s order, was found in contempt of Court and sent to prison. Defendant stayed in prison for
13 more than 1 year rather than complying with the Court’s Order.

14 In the published decision in finding Defendant in contempt of Court by Judge Govendo in
15 the Estate of Angel Maliti, the Court stated:

16 “In consideration of the attorneys’ failure to comply with numerous Court orders
17 and/or provide persuasive evidence in support of an impossibility defense, the Court
finds both attorneys in contempt of Court.”

18 Further, Judge Naraja, in response to orders to show cause for Rule 11 violations, found a
19 total of 20 rule 11 violations and fined Defendant a total of \$5,900 and \$1,000 for costs. To this day,
20 Defendant has never returned one cent of that estate money, and that case led to Defendant’s
21 suspension by this Court.

22 **3. Supreme Court Order on Appeal**

23 On appeal, the Supreme Court modified this Court’s order of suspension, finding it necessary
24 to upgrade the sanctions imposed by this Court to disbarment from the practice of law. Defendant
25 tried to request a rehearing and filed a declaration in the Supreme Court, which came to this Court’s
26 attention. In the declaration, which was signed by Defendant under penalty of perjury, and filed on
27 February 11, 2014, Defendant declared in part:

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1 “That it would be unwise for me to continue to defend myself in this case while I’m
2 in jail, in which I will be *beginning February 15, 2014* and for the next 8 months
thereafter.” (emphasis added)

3 Although Defendant made it very clear, under oath, that he knew he had to start serving his
4 sentence on February 15, 2014, he then filed a declaration in this Court, 14 days later on February
5 25, 2014, signed under penalty of perjury, stating that:

6 1. I am seeking to extend time to serve based on this Court’s December 18, 2013 order
7 which expressly states that I have up to February 15, 2015 to commence serving at
8 the Commonwealth Department of Corrections.

9 2. I relied on good faith for the order, but I heard from others that there might have been
10 a mistake with the proposed order. So therefore I am moving in good faith with
11 respect to this Court and the Commonwealth Office of the Attorney General to have
12 my time to commence serving either up to February 15, 2015 or, at a minimum, 90
13 days from today’s date.

14 3. I did not notice the “2015” that quick print gave to me.

15 4. I noticed that “2015” about January 2014 when I was planning to prepare another
16 request for continuance.

17 5. I relied on the Order in good faith.

18 The Court finds that Defendant’s use of the words “good faith” in this matter is untenable
19 in view of these explicit and conflicting statements made by Defendant under oath. The prosecutor
20 should perhaps inquire into the possibility that a crime of perjury may have been committed by
21 Defendant.

22 **B. Criminal Contempt Finding**

23 “Contempt of Court” is an act or omission that interferes with the administration of justice,
24 through conduct that disobeys judicial orders, shows disregard and disrespect for the authority and
25 dignity of the law, or tends to embarrass, impede or obstruct the Court in the performance of its
26 functions. The purpose of the law of contempt is to uphold and ensure the unimpeded and effective
27 administration of justice, secure the dignity of the Court, and affirm the fundamental supremacy of
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1 the law. The power of contempt is the sole means by which judges can enforce their orders and
2 affirm the rule of law for the benefit of the public.

3 The Court has duly considered the arguments of the parties.

4 Defendant, through counsel, is urging the Court to impose a sentence of probation and the
5 Government is recommending the maximum sentence of 6 months to run consecutive to his present
6 sentence.

7 In view of the foregoing observations which highlight some of the contumacious conduct of
8 Defendant in his dealings with the Court,, the Court believes that this is a case where the best
9 interests of justice and of this society may be best served by imposing the maximum jail term that
10 the Court believes may have a deterrent effect on the life of the Defendant upon his release, and on
11 those potential offenders, who don't take Court orders too seriously and think nothing of violating
12 them, and will serve as the retribution that society demands.

13 It is the judgment of the Court that the sentence of **Antonio M. Atalig** shall be as follows:

- 14 1. The Defendant shall serve the maximum sentence of six (6) months without parole
15 nor any work release or other special privileges that may be available, and a \$100
16 fine pursuant to 6 CMC § 3307. This sentence shall be consecutive to the sentence
17 Defendant is presently serving in pursuant to the Judgment of Conviction and
18 Commitment Order issued on November 22, 2013;
- 19 2. The Court also removes its non-objections to work release as stated in the judgment
20 of conviction and commitment order dated November 22, 2013, and hereby registers
21 its objection to any work release related to that sentence; and
- 22 3. The Defendant will pay an assessment fee of **twenty-five (\$25.00) dollars** as
23 required by P.L. No. 11-105.

24 Defendant is to be released from the Department of Corrections on May 7, 2015 which will
25 be the completion of the two sentences, to wit: 8 months to serve under said Judgment of Conviction
26 and Commitment Order and the 6 months sentence herein. Defendant has the right to appeal this
27 sentence within thirty (30) days from the date of this order.

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1 SO ORDERED this 15 day of April, 2014.



DAVID A. WISEMAN
Associate Judge

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