

CLERK OF COURT
SUPERIOR COURT

2014 DEC 22 PM 2: 26

BY: [Signature] COURT

1 **FOR PUBLICATION**

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

7 **COMMONWEALTH OF THE**)
8 **NORTHERN MARIANA ISLANDS**)
9 **Plaintiff,**)
10 **v.**)
11 **VICTOR VAL B. HOCOOG,**)
12 **Defendants.**)

CRIMINAL CASE NO. 14-0027

**ORDER AFFIRMING DRUG
TREATMENT SENTENCING
PROVISION**

13
14 **INTRODUCTION**

15 The Court in this matter ordered the parties to submit supplemental briefing
16 regarding the legality of the sentence imposed upon Defendant Victor Val Hocog
17 (“Defendant”). The Commonwealth of the Northern Mariana Islands (“Government”) is
18 represented by Chief Prosecutor Brian Flaherty. Defendant is represented by Assistant
19 Public Defender Matthew Meyer.

20 Based on review of the filings and applicable law, the court hereby affirms the
21 previously imposed sentence for the following reasons.

22 **BACKGROUND**

23 On September 25, 2014, Defendant pled guilty to Illegal Possession of a Controlled
24 Substance as stated in Count I of the Information and was sentenced to fifteen months

ENTERED

1 imprisonment with credit for 226 days time served. Among other provisions of Defendant's
2 plea agreement, he agreed to receive thirty months of rehabilitation services from the
3 Hawaii Habilitat Treatment facility (or similar services) upon his release from incarceration.
4 Additionally the \$10,000 bail posted by Defendant was to be used to pay for these
5 rehabilitation services and Defendant was to submit to the Attorney General's Office
6 ("AGO") proof of the drug rehabilitation program.¹ Failure to comply with the conditions
7 outlined in the plea agreement would subject Defendant to criminal contempt proceedings
8 under 6 CMC § 3307.² The Court accepted Defendant's change of plea on September 25,
9 2014, and issued a Judgment of Conviction and Commitment Order ("JCO") on November
10 3, 2014.

11 Subsequently, the Court became aware that it may have imposed an illegal sentence
12 in regards to the drug rehabilitation provision and ordered the parties to submit supplemental
13 briefing regarding this issue.

14 DISCUSSION

15 Defendant's briefing asserts that the Court's imposition of the drug treatment
16 provision was improper because the Court cannot impose such a probationary condition for
17 drug offenses and also, the Court would lack any enforcement mechanism for Defendant's
18 failure to undergo drug treatment. The Government asserts in its supplemental briefing that
19 the drug treatment provision should be upheld based upon the contractual nature of plea
20 agreements and the fact that Defendant has already complied with certain portions of the
21 plea agreement.

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23 ¹ The AGO was tasked with continuing to monitor Defendant's compliance with the rehabilitation program.

24 ² Additionally, given the contractual nature of plea agreements, if Defendant fails to perform under the plea agreement the Government could rescind the agreement and the case could be remanded for resentencing. *Commonwealth v. Duenas*, 4 N.M.I. 377 (1996).

1 The Court agrees with the Government's interpretation, and also affirms the drug
2 treatment as a non-probationary sentencing provision.³

3 **A. POSSESSION OF A CONTROLLED SUBSTANCE**

4 Defendant's brief first asserts that the drug treatment provision of Defendant's
5 sentencing is an improper probationary condition. However, Defendant's interpretation of
6 his sentencing is in error and the drug treatment provision is not a probationary condition.

7 The Commonwealth Code provides in relevant part that it is unlawful for any person
8 knowingly or intentionally to possess a controlled substance. 6 CMC § 2142(a). Any person
9 who unlawfully possesses a controlled substance "must be sentenced to a term of
10 imprisonment of not more than five years not subject to suspension, parole or probation". 6
11 CMC § 2142(b).

12 In the present case, Defendant was convicted of possession of a controlled substance
13 and therefore, is correct in his assertion that he is not subject to probation. However, the
14 Court is not imposing probation in sentencing Defendant to drug treatment. Rather, the
15 Court is requiring Defendant to undergo the necessary drug treatment program to further his
16 rehabilitation. It can be further asserted that the drug treatment program is not probationary
17 by the fact that it is the AGO's responsibility to ensure Defendant's compliance, not the
18 Office of Adult Probation ("OAP"). If the drug treatment term was considered a
19 probationary condition then it would be OAP's obligation to ensure compliance, which is
20 not the case in the present matter.

21 Lastly, Defendant's JCO encompassed all of the terms agreed to by the parties and
22 outlined that none of the terms therein were to be considered probationary. Therefore, both

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24 ³ The issue of drug treatment as a probationary condition was raised recently in this Court in *CNMI v. Masga*, Crim. No. 11-0121 (NMI Super. Ct. Oct. 28, 2014) (Order Clarifying Sentence and Commitment Order). The Court refrained from addressing the issue in that case due to the fact that the issue was not before the Court at that time.

1 parties agreed that none of the terms in the JCO, including the drug treatment provision,
2 were to be considered probationary. Accordingly, the drug treatment provision is not an
3 improper probationary condition, but rather is more analogous to what is referred to by the
4 federal government as supervised release.

5 **i. Supervised Release**

6 Supervised release allows federal courts to order supervised release in which a
7 convicted person's behavior is monitored for a set amount of time after release from prison
8 to ensure the successful rehabilitation of the convicted person. 18 USC § 3583.⁴ This
9 differs from both probation and parole in that probation is a criminal sentence that is
10 imposed instead of sending a convicted person to jail or prison. *See* BLACK'S LAW
11 DICTIONARY 1220 (7th ed. 1999). Parole is the release of a prisoner before the full sentence
12 has been served. *See* BLACK'S LAW DICTIONARY 1139 (7th ed. 1999).

13 Here, the Court's sentencing of Defendant to drug rehabilitation is more akin to
14 supervised release because unlike with probation, Defendant has actually been sentenced to
15 a term of imprisonment. Additionally, the supervised release is not analogous to parole
16 because Defendant will not be released unequivocally from confinement, he will still be
17 required to attend the drug treatment program. Accordingly, the drug treatment provision
18 imposed by the Court in Defendant's JCO should be considered a form of supervised
19 release. This type of sentencing provision is also aligned with the legislative purpose
20 supporting the controlled substance statute.

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24 ⁴ 18 U.S.C. § 3583 provides in relevant part: "The court, in imposing a sentence to a term of imprisonment for a felony or a misdemeanor, may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release after imprisonment."

1 **ii. Legislative Purpose**

2 Title 6 CMC § 2142 was codified pursuant to the enactment of Public Law (“PL”) 7-
3 42, § 5.⁵ The Legislature’s stated purpose for enacting PL 7-42, provides:

4 [T]o enact measures that will assist in the prevention of the
5 importation of controlled substances into the Commonwealth; to
6 impose more severe penalties for the importation, trafficking,
7 distribution, delivery, and possession of drugs classified in Schedules
8 I and II of controlled substances as defined in 6 CMC Division; to
9 enhance the detection of illicit money laundering activities by
10 amending the authority of the Customs Service to include the
conducting of outbound searches and requiring the declaration
\$10,000 or more in currency for passengers departing the
Commonwealth; to prevent the flow of controlled substances between
islands by amending the authority of the Customs Service to include
inter-island searches; to require government planning for a drug
rehabilitation and treatment program; and for other purposes.

11 The legislative purpose behind 6 CMC § 2142 would appear to allow for harsher
12 sentencing of persons convicted of drug offenses to help deter from such behavior in the
13 future. The legislature has explicitly provided that a person convicted pursuant to 6 CMC §
14 2142 must be sentenced to imprisonment and has restricted courts from imposing probation
15 to accomplish this goal of harsher sentences.⁶ Federal courts, under 18 USC § 3583, are
16 able to supervise convicted persons after the prison term has already been served to monitor
17 a convicted person’s behavior to ensure successful rehabilitation.

18 In Defendant’s case, the Court sentenced him to 15 months pursuant to the
19 requirement under the statute. Additionally, the Court imposed the drug treatment program
20 to better assure that Defendant receive the treatment he needs and to ensure his successful

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23 ⁵ 6 CMC § 2142 would be better served if it provided for different sentencing requirements dependent upon the quantity of
the controlled substance involved. Also, the Court believes that the statute would be more effective if it included statutory
minimum jail terms and mandatory supervised release for a minimum amount of time upon release.

24 ⁶ 6 CMC § 2142 was enacted pursuant to Public Law 7-42. As part of its findings, the legislature specifically provided that
the government should implement a drug rehabilitation program in the Commonwealth. PL 7-42, § 3. The drug treatment
provision imposed as part of Defendant’s sentencing is aligned with the Legislature’s stated purpose.

1 rehabilitation.⁷ In sentencing Defendant to both imprisonment and drug treatment the Court
2 has imposed a harsher sentence in order to achieve the legislative purpose.⁸ It is also the
3 Court's hope that in imposing drug treatment the Defendant will be less inclined to revert to
4 his old habits upon release from imprisonment.

5 **B. PLEA AGREEMENTS**

6 In determining that the imposition of the drug treatment provision is not an illegal
7 probationary condition, the Court now turns to the Government's argument asserting that the
8 drug treatment provision should not be stricken from Defendant's sentencing because
9 Defendant agreed to the term as part of his plea agreement.

10 Our Supreme Court has previously determined that plea agreements are unilateral
11 contracts. *Camacho*, 2002 MP 22 ¶ 13. "Failure to fulfill such a promise constitutes a
12 breach of the plea agreement, requiring remand for resentencing". *Id.* (citing *Santobello*, 404
13 U.S. at 262). Therefore, a promise made in a plea agreement is binding on the defendant.
14 *U.S. v. Lovell*, 81 F.3d 58 (7th Cir. 1996). However, a plea agreement is nonbinding and
15 either party may withdraw at any time before a criminal defendant performs by pleading
16 guilty and the plea agreement is approved by the Court. *Camacho*, 2002 MP 22 ¶ 14.
17 (emphasis added).

18 In the present matter, Defendant agreed to the drug treatment provision as a term of
19 his plea agreement with the Government. Defendant agreed, as part of his plea agreement,
20 to complete the drug treatment program under the supervision of the Office of the Attorney
21 General's Office. Defendant further agreed to the provision in Court after being advised of

22 ⁷ Presently, as in the *Masga* case referenced above, inmates at the Department of Corrections (DOC) do not have access to
23 drug treatment plans while incarcerated. In adopting a system similar to 18 U.S.C. § 3853, courts would be better able to
ensure that the stated purpose of PL 7-42, to provide drug rehabilitation programs, would be better effectuated.

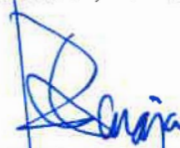
24 ⁸ It appears that the Commonwealth government could provide drug rehabilitation and other treatment programs while
incarcerated under a government-supervised program. However, with current fiscal restraints, another solution would be
the adoption of arrangements like in the present matter to ensure that defendants receive the proper programs to ensure
successful rehabilitation.

1 his rights and responsibilities under the plea agreement. It is highly inappropriate for
2 Defendant to now object to the drug treatment provision as improper. Any objections
3 should have been made during the course of his plea negotiations or any time prior to the
4 Court's acceptance of his plea. Therefore, the plea agreement between Defendant and the
5 Government is a valid contract and the Court will not disrupt their contractual relationship
6 as such.

7 **CONCLUSION**

8 The Court hereby affirms the drug treatment provision included as part of
9 Defendant's sentencing and Defendant is ordered to comply with this provision upon his
10 release from incarceration.

11 **IT IS SO ORDERED** this 22nd day of December, 2014.

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14 **ROBERTO C. NARAJA**, Presiding Judge

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