

CLERK OF COURT  
SUPERIOR COURT  
1991

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

7 COMMONWEALTH OF THE NORTHERN ) Criminal Case No. 90-191  
8 MARIANA ISLANDS, )  
9 Plaintiff, )  
10 v. ) ORDER GRANTING PROBATION  
11 FRANCISCO R. SANTOS ) REVOCATION  
12 Defendant. )  
\_\_\_\_\_ )

13 This matter came before the Court on the Government's motion  
14 to revoke Defendant Francisco R. Santos' probation due to his  
15 November 9, 1994 conviction for burglary and theft. Although  
16 neither party submitted briefs in this matter, the Court heard  
17 oral argument from Eric Basse, Counsel for the Defense, and  
18 Assistant Attorney General Cheryl Gill, representing the  
19 Government.

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21 I. FACTS

22 On December 4, 1990, the Government filed an information  
23 against the Defendant alleging three separate counts of receiving  
24 stolen property. This case was set to go to trial on June 17,  
25 1991. However, on May 28, 1991, the Defendant appeared before the  
26 Court and presented the Court with a written plea agreement signed

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28 FOR PUBLICATION

1 by the Defendant and a Government representative. After advising  
2 the Defendant of his constitutional rights, the Court accepted the  
3 agreement and sentenced the Defendant to five years in jail, but  
4 suspended the final four years of the five year sentence.

5 The written plea agreement itself did not refer to any  
6 probationary period. However, when handing down the sentence  
7 orally, the Court made it clear that the Defendant would remain  
8 "on probation" for the suspended portion of his sentence. Ms.  
9 Lori Faymonville, then counsel of record for the Defendant, made  
10 it clear to the Court that she understood that her client would be  
11 on probation. Next, the Court asked the Defendant if he had any  
12 questions concerning his sentence. The Defendant stated that he  
13 understood his sentence.

14 At the close of these proceedings, the Court issued written  
15 conditions of the probation (document of probation) to Ms.  
16 Faymonville. Although Ms. Faymonville had an obligation to  
17 forward the document of probation to the Defendant for his review  
18 and signature, the Defendant never signed the document. The  
19 document of probation is a standardized document listing eight  
20 standard conditions which all probationers in the C.N.M.I. must  
21 heed for the duration of their terms of probation.&/ The first  
22 condition of the document of probation reads: "You shall refrain  
23 from violation of any law."

24 On July 24, 1991, the Defendant began serving his one year  
25 jail term. After his release and during the four year

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27 <sup>1/</sup> In addition to the eight standard conditions, a judge  
28 may tailor the conditions of probation by imposing special  
conditions (e.g. probationer must enter alcohol abuse treatment  
center) on a probationer. No special terms were assigned in this  
case.

1 probationary period, the Defendant was arrested for burglary and  
2 theft. On November 9, 1994, the Defendant was convicted of  
3 burglary, in violation of 6 CMC § 1801(a), and theft, in violation  
4 of 6 CMC § 1601(a) in the C.N.M.I. Superior Court by a jury of his  
5 peers. See Criminal Case No. 94-33, Judgment of Conviction (Nov.  
6 10, 1994).

7 On December 12, 1994, at the Government's request, the Court  
8 held a revocation hearing for the Defendant pursuant to Rule  
9 32.1(a)(2) of the Commonwealth Rules of Criminal Procedure. The  
10 Government claims the Defendant's recent conviction constitutes a  
11 grievous violation of his probation and should trigger its  
12 revocation. The Defendant claims that he never received notice of  
13 the conditions of his probation because the Court failed to read  
14 them into the record and because his original attorney, Ms.  
15 Faymonville, never presented him with the document of probation  
16 she received from the Court. Having never received notice of the  
17 conditions of his probation, Defendant claims that his probation  
18 has been conditionless, and any revocation would violate his due  
19 process rights under the Fourteenth Amendment.

20 The Government contends that Ms. Faymonville's receipt of the  
21 document of probation constituted adequate notice to the  
22 Defendant. Alternatively, the Government claims that the Court's  
23 oral mandate placing the Defendant on "probation" constituted  
24 adequate notice to this particular Defendant because of his prior  
25 criminal history.

26 In addition, the Defendant claims that the term of probation  
27 requiring the Defendant to refrain from violation of any law  
28 violates his Due Process rights under the Fourteenth Amendment

1 because it is impermissibly vague. The Government counters that  
2 the term is not overly vague. In the **alternantive**, he Government  
3 contends that the Defendant lacks standing to make such an  
4 argument because the crimes triggering this revocation hearing  
5 bear a close relationship to the Defendant's original crime of  
6 receiving stolen property, and thus Defendant had knowledge that  
7 the term "**refrain** from violation of any law" at the very least  
8 included theft related crimes.

9 Other than the procedural due process issues raised by the  
10 Defendant, there was little discussion at the revocation hearing  
11 about the substantive merits of the Governments motion.  
12

## 13 **II. ISSUE**

14 1. Whether the Court's oral pronouncement that the  
15 Defendant would be "on probation" for a four year period  
16 constituted adequate notice to this Defendant that he would be  
17 required to obey all laws during the pendency of his probation.

18 2. Whether the condition of probation directing the  
19 Defendant to "**refrain from violat[ing] any law**" is vague, and thus  
20 violates the Defendant's Due Process rights under the Fourteenth  
21 Amendment.

22 3. Whether Defendant's recent criminal convictions merit  
23 the revocation of his probation.  
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1 implied condition of the order imposing probation); *Matthews v.*  
2 *State*, 498 A.2d 655, 660 (Md.App. 1985)(defendant's probation  
3 revoked for violating implied condition of probation by committing  
4 offence of grand larceny).

5 In *Wilcox v. State*, 395 So.2d 1054, 1056 (Ala. 1981), the  
6 Supreme Court of Alabama held that a defendant's probation was  
7 properly revoked after he committed a felony even though the  
8 defendant had not received notice of the conditions prior to his  
9 commission of the offense. *Id.* First, the *Wilcox* court  
10 acknowledged that the defendant's sentence notified him that he  
11 was on probation. *Id.* at 1055. Next, the *Wilcox* court reasoned  
12 that, regardless of whether the defendant received notice of  
13 specific conditions of his probation, a court may revoke a  
14 "[d]efendant's probation for violation of a condition implicit in  
15 every suspended or probationary sentence." *Id.* at 1056. Finally,  
16 the *Wilcox* court upheld the defendant's probation revocation  
17 because it considered a condition barring felonies to be an  
18 implied condition of the defendant's probation. *Id.*

19 In the case at bar, the record indicates that the Court  
20 notified the Defendant that he would be "on probation" for the  
21 suspended portion (four years) of his sentence. During that  
22 period, the Defendant was arrested and convicted for the felony of  
23 burglary. Although the Defendant claims he received no notice of  
24 the specific conditions of his probation, the Court finds that  
25 such a lack of notice is of no consequence when, as here, the  
26 Defendant violated a condition of probation that is implicit in  
27 the term "probation".  
28

1 Thus, contrary to Defendant's position that his probation was  
2 "conditionless", the common law demonstrates that certain implicit  
3 conditions of probation attached to him by virtue of the Court's  
4 imposition of "probation" on May 28, 1991, regardless of whether  
5 he received notice of the specific conditions of his probation.  
6 Accordingly, the Court's oral pronouncement that the Defendant  
7 would be "on probation" for a four year period constituted  
8 adequate notice to the Defendant that he would be prohibited from  
9 committing a felony during the pendency of his probation.<sup>3/</sup>

10 Notwithstanding the adequacy of the notice Defendant received  
11 in this case, this Defendant does not stand in the shoes of a  
12 probationer unfamiliar with the general conditions of probation in  
13 the Commonwealth. The Court may take judicial notices<sup>1</sup> of the  
14 fact that this Defendant, prior to receiving his sentence in this  
15 case, twice read and signed C.N.M.I. probation documents setting  
16 forth terms and conditions of probation. See Criminal Case No. 87-  
17 132 and Criminal Case No. 89-26. Both documents directed the  
18 Defendant to refrain from committing any crimes during his  
19 probation. In connection with Criminal Case No. 87-132, the Court  
20 revoked the Defendant's probation for failing to obey all laws

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22 <sup>2/</sup> To be sure, had the Defendant's probation been revoked  
23 for violating a term of his probation not implicit in the  
24 imposition of probation, such as a condition that he find gainful  
employment, the Court would share the Defendant's Fourteenth  
Amendment concerns.

25 <sup>4/</sup> A trial court may take judicial notice of court files  
26 involving a defendant's past convictions in order to shed light on  
27 a question of fact. State v. *Bayliss*, 704 P.2d 1363, 1365  
28 (Ariz.App. 1985)(court's review of its files showing dates of  
defendant's past crimes confirmed defendant was not spree  
offender). A trial court need not give advance notice to parties  
before taking judicial notice of its own records. State v. *Lowe*,  
715 P.2d 404, 408 (Kan. 1986).

1 after the Defendant had been charged with receiving stolen  
2 property during that probation period. Thus, the Defendant had  
3 first hand knowledge that failing to obey all laws during the  
4 probationary period in the case at bar would likely result in his  
5 reincarceration.

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7 **B. Vagueness**

8 The Defendant also contends that the condition of probation  
9 directing him to "refrain from violat[ing] any law" is vague, and  
10 thus violates the Defendant's Due Process rights under the  
11 Fourteenth Amendment. Once again counsel for the Defendant offers  
12 the Court no support for this proposition. Through its own  
13 research, the Court has found Defendant's position lacks merit.

14 Courts generally consider a probation condition requiring a  
15 probationer to "obey all laws" as the equivalent of requiring  
16 "good behavior." *Horsev v. State*, 468 A.2d 684, 687 (Md.App.  
17 1983); see 58 A.L.R.3d 1156, 1162. The Court of Appeals of  
18 Indiana has held that a probation condition requiring "good  
19 behavior" is not void for vagueness. *Shumaker v. State*, 431 N.E.2d  
20 862, 864 (Ind.App. 1982). Even more germane to the case at bar,  
21 the Court of Appeals of Georgia upheld a condition prohibiting a  
22 probationer from "indulging in any unlawful . . . conduct" as not  
23 overly vague. *Rowland v. State*, 184 S.E.2d 494, 495 (Ga.App.  
24 1971); see also *Hinton v. State* 195 S.E.2d 472, 474 (Ga.App.  
25 1973)(condition that the defendant obey all State, Federal, and  
26 municipal laws not so vague as to be unenforceable); cf. *Clackler*  
27 *v. State*, 204 S.E.2d 472, 473 (Ga.App. 1974)(probation condition  
28 "not to have any more trouble with [your] wife may have been



1 overly vague). In light of these cases, the Court holds that the  
2 C.N.M.I.'s condition of probation requiring probationers to  
3 "refrain from violat[ing] any law" does not violate the Due  
4 Process Clause of the Fourteenth Amendment.

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6 **C. Good Cause for Probation Revocation Exists**

7 In light of Defendant's recent convictions for burglary and  
8 theft, and their similarity to the original crime of receiving  
9 stolen property which spawned this probation, there remains no  
10 question that this Defendant has violated the most basic condition  
11 of his probation. Therefore, the Defendant's probation in this  
12 case is hereby revoked. Accordingly, the Court hereby sentences  
13 the Defendant to serve the four year (suspended) portion of the  
14 sentence he received on May 28, 1991 under the plea agreement.  
15 Due to the Court's unfamiliarity with the facts surrounding the  
16 Defendant's incarceration in Criminal Case No. 94-33,<sup>5/</sup> the Court  
17 hereby requests both parties to submit: (1) their respective views  
18 on whether any portion of the four year sentence should be  
19 considered already served, and (2) proposed dates for the  
20 Defendant's incarceration in light of his sentence in Criminal  
21 Case No. 94-33. Such submissions shall be due within seven days  
22 of the date of this Order.

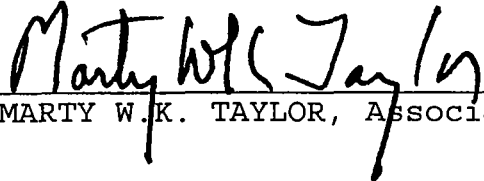
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27 <sup>5/</sup> Specifically, the Court is concerned about whether the  
28 sentencing Court in Criminal Case No. 94-33 credited the Defendant  
for the time he spent in jail after his arrest in that matter. If  
not, justice would require this Court to delete that time period  
from the four year sentence.

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IV. CONCLUSION

For the foregoing reasons, the Government's motion to revoke Defendant Francisco R. Santos' probation due to his November 9, 1994 conviction for burglary and theft is GRANTED.

So ORDERED this 16 day of February, 1995.

  
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MARTY W.K. TAYLOR, Associate Judge