

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,	)	Traffic Case No. 97-4019
	)	
Plaintiff,	)	<b>ORDER GRANTING</b>
	)	<b>DEFENDANT TERWICK UDEI'S</b>
v.	)	<b>MOTION TO DISMISS</b>
	)	
TERWICK UDEI,	)	
	)	
Defendant.	)	
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**I. PROCEDURAL BACKGROUND**

This matter came before the Court on February 10, 1999, in Courtroom D on Defendant's motion to dismiss. Barry A. Hirshbein, Esq., appeared on behalf of the Commonwealth. Wesley M. Bogdan, Esq., appeared on behalf of the Defendant, Terwick Udei. The Court, having heard the arguments of counsel and being fully informed of the premises, now renders its decision.

**II. FACTS**

Defendant entered a guilty plea to the charges of driving under the influence of alcohol in violation of 9 CMC §7105, and for failure to possess a valid driver's license in violation of 9 CMC §2201. The terms of the Judgment and Probation Order required that Defendant be sentenced to 30 days imprisonment, 27 days to be suspended for 1 year if certain conditions were [p. 2] met. These conditions included: (1) Defendant must report to the Division of Correction to serve the remainder of his sentence; (2) Defendant must pay \$500.00 before October 21, 1998;

(3) Defendant's driver's license is suspended for 90 days, except for the privilege to drive to and from work; and (4) Defendant must pay restitution to be determined by the Probation Office. Defendant failed to pay the \$500.00 fine and did not attend Alcohol Information School.

**FOR PUBLICATION**

Accordingly, the Commonwealth filed a motion to revoke the suspended sentence on November 25, 1998. The Commonwealth's motion was heard on January 20, 1999. Defendant's probation, however, ended December 23, 1998, twenty-eight days earlier. On January 26, 1999, Defendant filed a motion to dismiss, arguing that the Court lacked jurisdiction to revoke Defendant's suspended sentence because the probation period had expired.

### III. ISSUE

1. Whether the Court has jurisdiction to revoke Defendant's suspended sentence when the revocation process was initiated but not completed within the probationary period?

### IV. ANALYSIS

The Commonwealth Code addresses revocation of probation. 6 CMC §4113 states in pertinent part:

(b) Upon violation of any of the terms and conditions of probation at any time during the probationary period, the court may issue a warrant for the rearrest of the person on probation and, after giving the person an opportunity to be heard and to rebut any evidence presented against the person, may revoke and terminate the probation.

(d) The court may at any time during the period of probation modify its order of suspension of imposition of sentence. . . . If the court has not revoked the order of probation and pronounced sentence, the defendant shall, at the end of the term of probation, be discharged by the court.

Defendant argues that the Commonwealth's motion to revoke suspended sentence should be dismissed with prejudice because the court lacks jurisdiction to grant such a motion when the Defendant's probation period has expired. The Commonwealth Superior Court addressed this [p. 3] issue in Commonwealth v. Baulechong, Cr. Case No. 93-001 (N.M.I. Super. Ct. Nov. 27, 1998) (Decision and Order Dismissing Motion to Revoke Probation). In Baulechong, the Commonwealth filed a motion to revoke defendant's probation prior to the expiration of the probationary period. The probationary period expired, however, before the motion hearing took place. The Baulechong court held that the plain language of 6 CMC §4113(d) acts to prevent the Commonwealth from pursuing a revocation of probation after the end of the probationary term. Id., at 2 citing Commonwealth v. Hemley, Cr. Case No. 91-146 (N.M.I. Super. Ct. Dec. 22,

1994) (Decision and Order on Revocation of Probation). In Hemley, the Commonwealth filed a motion to revoke defendant's suspended sentence prior to the expiration of the probationary period. The probationary period expired before the motion hearing took place. The court held that pursuant to 6 CMC §4113(d), "a motion for revocation of probation must be filed and a hearing must take place prior to the expiration of the probationary period." Supra, at 5.

The court finds Baulechong and Hemley to be persuasive. Therefore, the court finds that it lacks jurisdiction to revoke Defendant's suspended sentence under 6 CMC §4113(d). The court is not pleased with Defendant's failure to complete the terms of the Judgment and Probation Order, however, the court cannot construe a statute against its plain meaning. Office of Attorney General v. Deal, 3 N.M.I. 110, 117 (1992).

#### V. CONCLUSION

For the foregoing reasons, Defendant's motion to dismiss is **GRANTED**.

So ORDERED this 18 day of February, 1999.

/s/ Juan T. Lizama  
JUAN T. LIZAMA, Associate Judge