

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

COMMONWEALTH OF THE NORTHERN)
MARIANA ISLANDS,)

Plaintiff,)

v.)

UREMAKL NGIRALMAU,)

Defendant.)
_____)

Criminal Case No. 98-478

ORDER

I. PROCEDURAL BACKGROUND

This matter came before the Court on February 10, 1999, and was scheduled for a preliminary hearing. Assistant Attorney General Barry A. Hirshbein, Esq., appeared on behalf of the Commonwealth. Assistant Public Defender Masood Karimipour, Esq., appeared on behalf of the Defendant, Uremakl Ngiralmau.

II. FACTS

On December 18, 1998, the Court found probable cause to charge Defendant as set forth in the Criminal Information filed December 17, 1998. Defendant is charged under Counts I and II of the Information with Assault and Battery in violation of 6 CMC §1202(a). Defendant is charged under Counts III and IV of the Information with Criminal Contempt in violation of 6 CMC §3307. Bail was set at \$1,000.00.

On December 24, 1998, Defendant was released to a third-party custodian pursuant to [p. 2] 6 CMC §6401 et seq. The terms and conditions of release require that Defendant: (1)

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return to Court whenever required to do so; (2) obey all Commonwealth laws; (3) surrender all travel documents and not leave the island of Saipan; (4) stay away from all seaports and airports;

(5) not drink any alcoholic beverages in public places; (6) observe a daily curfew from 6:00 p.m. to 6:00 a.m., except for employment; (7) keep all appointments with his attorney; and (8) have no contact with his wife, the alleged victim.

III. ISSUE

1. Whether the terms and conditions of Defendant's release constitute a substantial deprivation of liberty, thereby requiring a preliminary hearing?

IV. ANALYSIS

In Babauta v. Superior Ct., the Commonwealth Supreme Court addressed the issue of whether a criminal defendant is entitled to a preliminary hearing under the Commonwealth Code and the United States and Commonwealth Constitutions. Babauta v. Superior Ct., 4 N.M.I. 309, (1995). The Court first addressed Rule 5.1 of the Commonwealth Rules of Criminal Procedure, which provides that: “[a] defendant is entitled to a preliminary examination, unless waived, **if he/she is substantially deprived of his/her liberty.** . . . If the defendant does not waive the preliminary examination, the judge shall schedule a preliminary examination.” Id., at 313, citing Com. R. Crim. P. 5.1 (emphasis added). The Court held that incarceration of a Defendant prior to trial is a “substantial deprivation of liberty” and thus requires a preliminary hearing. The Court noted that certain conditions of release could rise to the level of a “substantial deprivation of liberty,” but held that “[t]his determination will be left . . . to the sound discretion of the trial judge in each case.” Id. The Court further held that neither the Commonwealth Constitution's due process clause, nor the U.S. Constitution's due process clause guarantee, expressly or impliedly, a right to a preliminary examination for all accused persons in the Commonwealth. Id., at 314.

The terms and conditions of release require that Defendant: (1) return to Court whenever required to do so; (2) obey all Commonwealth laws; (3) surrender all travel documents and not [p. 3] leave the island of Saipan; (4) stay away from all seaports and airports; (5) not drink any

alcoholic beverages in public places; (6) observe a daily curfew from 6:00 p.m. to 6:00 a.m., except for employment; (7) keep all appointments with his attorney; and (8) have no contact with his wife. The only condition that could be construed as a deprivation of Defendant's liberty is the requirement that Defendant observe a daily curfew from 6:00 p.m. to 6:00 a.m., except for employment. This condition is not a substantial deprivation as Defendant is free to travel anywhere on Saipan at any other time of the day, subject to conditions (8) and (4). The Court finds that the terms and conditions of Defendant's release are not a "substantial deprivation" of liberty and therefore Defendant is not entitled to a preliminary hearing under Rule 5.1 of the Commonwealth Rules of Criminal Procedure.

V. CONCLUSION

For the foregoing reasons, the Court finds that Defendant is not entitled to a preliminary hearing.

So ORDERED this 23 day of February, 1999.

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