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FOR PUBLICATION

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,)	CRIMINAL CASE NO. 02-0393B
)	
Plaintiff,)	ORDER DENYING DEFENDANT’S MOTION FOR RECONSIDERATION OF SENTENCE
)	
v.)	
)	
DOMINIC HIDEO,)	
)	
Defendant.)	
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This matter came on for hearing on September 17, 2004, pursuant to Defendant’s *Motion for Reconsideration of Sentence* (“Motion”). The Government was represented by Grant Sanders, Assistant Attorney General. The Defendant, Dominic Hideo, was represented by Jennifer Ahnstedt, Deputy Public Defender. After reviewing the pleadings filed and having heard the arguments of counsel the Court enters the following decision.

REDUCTION OF SENTENCE

The Defendant’s basis for his motion is (1) that there is no mandatory prison sentence imposed by law for this conviction, and (2) Defendant’s assertion that he (a) has increased family hardship; (b) while out on bail, preceding his incarceration, he stayed within the bounds of the law and was caring for his sister’s children; (c) has attended anger management classes and is seeking to attend alcohol abuse classes; (d) has expressed remorse for his crime both prior and during incarceration; (e) while incarcerated, has displayed good behavior; and (f) has letters of support from family and community members attesting to his good character. The Defendant relies on Com. R. Crim. P. 35(b) and *Commonwealth v. Aquino*, 2 CR 899 (Trial Ct. 1986).

1 **1. Mandatory Minimum**

2 The Defendant pled guilty to aggravated assault and battery pursuant to 6 CMC §1203.
3 Pursuant to Section 1203(b) “[a] person convicted of aggravated assault and battery may be
4 punished by imprisonment for not more than ten years.” 6 CMC § 1203(b). Defendant argues that
5 the “legislature did not establish a mandatory minimum sentence for [this crime] despite recently
6 enacted domestic violence legislation.” Motion at 3. Additionally, Defendant argues that “there is
7 nothing inherent in the crime which mandates a five year sentence.” *Id.* The Court does not agree
8 with this line of reasoning. Although the legislature did not carve out a mandatory minimum, it did
9 contemplate that a person convicted of aggravated assault and battery can receive up to ten years.
10 Actual time imposed is left to the discretion of the court and the plea agreement reached between
11 the parties.

12 The imposition of sentence and exercise of discretion are fundamentally and inherently
13 judicial functions. “While no bargain or agreement can divest the court of the sentencing discretion
14 it inherently possesses, a judge who has accepted a plea bargain is bound to impose a sentence
15 within the limits of that bargain.” *California v. Superior Court*, 62 Cal. Rptr. 220, 222 (Cal. Ct.
16 App. 1997). Here, the Court stayed within the terms that had been bargained for by the Defendant
17 in exchange for his plea of guilty. Lack of a mandatory minimum sentence is not a valid reason for
18 a reduction of sentence.

19 **2. Defendant’s Assertions**

20 Next Defendant puts forth a variety of reasons as to why his sentence should be reduced,
21 ranging from family hardship to his good behavior while incarcerated. Again, the Court stresses that
22 the term of incarceration was agreed upon by the Defendant via the plea agreement, in exchange for
23 the dismissal of additional charges brought by the Government. The number of years imposed on
24 Defendant was not an arbitrary number, it was a term contemplated by the laws of the CNMI and
25 by the agreement entered into by Defendant.

26 Defendant’s basis for his Motion is an alleged hardship that he and his family are
27 experiencing as a result of his incarceration. Defendant took care of his sister’s children while she
28 and her husband were working, Defendant also has outstanding loans in repayment status.

1 Defendant's sister, per her letter to the court, has indicated that she has had to send her children back
2 to Palau because she has no one to care for them, additionally she has been burdened with the
3 responsibility of paying Defendant's debt. The Defendant has four children of his own to support.

4 In *Aquino*, the defendant's motion for reduction of sentence was based on seven letters from
5 the defendant's family and friends which discussed the hardship to the family and Mr. Aquino's
6 good behavior since the time of his incarceration. The court found that the hardship to his family
7 was minimal, and although his exemplary conduct in prison was commendable, he did not show
8 evidence of "rehabilitation and true remorse." *Aquino*, 2 CR at 902. Therefore, the circumstances
9 did not adequately justify a reduction in sentence. *Id.* at 903.

10 A CNMI Supreme Court case pertaining to sentence reduction is *Commonwealth v.*
11 *Ramangmau*, 5 N.M.I. 19, 20 (1996). In that case, it was clear from the record that while the trial
12 court found the rationale in *Aquino* to be persuasive, it considered everything that defendant had to
13 say before denying his motion. In its order, the trial court stated that it considered the letter by the
14 defendant and the affidavit of the Director of Corrections, as well as the defendant's testimony,
15 before denying the motion. In addition, except for the declaration that the defendant's family was
16 having difficulties as a result of his imprisonment, all of the new evidence -- that the defendant was
17 a model prisoner, that he was a changed man and that he had learned to accept responsibility -- was
18 based on his conduct while he was in custody. The trial court correctly found that the only new
19 circumstances pertained to the defendant's exemplary conduct while in custody, and by inference
20 the court concluded that this was insufficient to merit a reduction in his sentence.

21 The current Motion contains letters from various family and community members stating that
22 Defendant is a "good guy" who has a propensity toward violence when he drinks. In his motion
23 Defendant points out that he has graduated from a Northern Marianas College program magna cum
24 laude. Defendant claims that he has been striving to become a better citizen. He has attended and
25 finished anger management, as well as a course in "learning to live and learning to love." He is also
26 on the waiting list for an alcohol abuse program.

27 As far as Defendant's behavior prior to incarceration as that of a law-abiding citizen, he was
28 under order by the Court to do just that. Furthermore, he was in jeopardy of forfeiting bail monies

1 if he did not comply. The Court is not persuaded by Defendant's rationale that he should now be
2 somehow rewarded for that behavior.

3 Defendant's claim that his good behavior during incarceration should account for a reduction
4 in sentence is similarly not persuasive. As expressed by the court in *Aquino*, "defendant's asserted
5 exemplary conduct while he is incarcerated is to be commended but is hardly sufficient 'evidence'
6 of rehabilitation and true remorse. Certainly, continued good conduct while in custody will stand
7 the defendant in good stead when he is considered for parole." *Aquino*, 2 CR at 902. Here, just as
8 in *Aquino*, "the showing made by the defendant in this motion falls way short of providing any
9 ground for the reduction of defendant's sentence." *Id.* at 903.

10 Although a factor that the Court may consider for reducing a sentence is increased family
11 hardship, a prison sentence is hardly ever without the consequence of hardship to the defendant and
12 to family members as well. The hardships that result to a convicted criminal's family as a
13 consequence of his incarceration are the natural and foreseeable result of the criminal's behavior,
14 and whatever burden may result to the family is solely the product of the defendant's criminal
15 conduct. *Commonwealth v. Villagomez*, Crim. No. 02-0121 (N.M.I. Super. Ct. Feb. 25, 2004) (Order
16 Denying Defendant's Motion for Reconsideration of Sentence).

17 CONCLUSION

18 Incarceration is a form of punishment applied to criminal conduct. Parameters are set by
19 statutes and followed by prosecutors and courts alike. Here the Court has followed the terms of the
20 plea agreement and the recommendation of the Office of Adult Probation. Although the Defendant
21 is arguing that there is no mandatory term of five years, it was contemplated within the plea
22 agreement. There was no surprise or prejudice to the Defendant.

23 This Court does not take sentencing lightly. The Court notes that the Defendant had access
24 to only a portion of the information and evidence relied upon to make a sentencing determination.
25 Many factors go into deciding the length of incarceration and probation and also into the amount and
26 terms of fees and other rehabilitative measures. After careful consideration of all information made
27 known to the Court prior to actual sentencing, the Defendant's sentence of five years was justified
28 and not unduly harsh. No significant mitigating circumstances have been brought forth to warrant

1 a reduction in sentence.

2 For the reasons set forth above, it would be contradictory to the nature and purpose of
3 criminal sanctions, as well as to the notion of bargained -for exchange inherent to plea-bargaining,
4 for this Court to grant Defendant's request. For good cause, Defendant's motion to reduce his
5 sentence is hereby **DENIED**.

6

7 **IT IS SO ORDERED**

8 **ENTERED** this 22nd day of September 2004.

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/s/
KENNETH L. GOVENDO, Associate Judge

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