

FILED
SUPERIOR COURT
OF GUAM

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CLERK OF COURT

BY: 

IN THE SUPERIOR COURT OF GUAM

THE PEOPLE OF GUAM,

CRIMINAL CASE NO. CF0117-21

vs.

DECISION AND ORDER

ATHEN TRICKSON BARBOSA,

Defendant.

INTRODUCTION

This matter is before the Honorable Vernon P. Perez on Defendant **ATHEN TRICKSON BARBOSA'S** ("Defendant") Motion for Reduction of Sentence, filed August 1, 2022. Defendant is represented by Assistant Public Defender William Bischoff and the People of Guam ("the Government") are represented by Assistant Attorney General Sean Brown. Having reviewed the pleadings, the arguments presented, and the record, the Court now issues the following Decision and Order.

BACKGROUND

On March 11, 2021, Defendant was indicted with two counts of First Degree Criminal Sexual Conduct (As a First Degree Felony) and three counts of Second Degree Criminal Sexual Conduct (As a First Degree Felony). (Indictment, Mar. 11, 2021). On December 22, 2021, Defendant entered a guilty plea to the Second Charge of Second Degree Criminal Sexual Conduct (As a First Degree Felony) – Count One pursuant to a Plea Agreement with the Government. (Plea Agreement, Jan. 4, 2022). The Plea Agreement provided that "for the

1 offense of *Count One* of the Second Charge of **SECOND DEGREE CRIMINAL SEXUAL**
2 **CONDUCT (As a First Degree Felony)** the People and the Defendant are free to argue for a
3 sentence within a range of *five (5) years to ten (10) years* imprisonment at the Department of
4 Corrections, Mangilao, with credit for time served.” (Plea Agreement at 4, Jan. 4, 2022). The
5 Court ordered a Pre-Sentence Investigation Report be prepared by Probation and on April 5,
6 2022, the parties returned for sentencing. After hearing from counsels and Defendant, the Court
7 sentenced Defendant to ten (10) years of imprisonment, with credit for time served. Defendant
8 was ordered to self-surrender to the Department of Corrections to begin his term of
9 imprisonment on May 2, 2022.

10 On August 1, 2022, Defendant filed the instant motion. On August 9, 2022, the
11 Government filed its Opposition. No reply was filed. The Court subsequently placed the matter
12 under advisement without further oral argument.

13 DISCUSSION

14 The reduction of a sentence after entry of judgment is governed by 8 G.C.A. § 120.46,
15 which provides as follows:

16 The court may correct an illegal sentence at any time and may correct a sentence
17 imposed in an illegal manner within the time provided herein for the reduction of
18 sentence. The court may reduce a sentence within one hundred twenty (120) days
19 after the sentence is imposed, or within one hundred twenty (120) days after
20 receipt by the court of a mandate issued upon affirmance of the judgment or
21 dismissal of the appeal, or within one hundred twenty (120) days after entry of
any order or judgment of the Supreme Court of Guam, having the effect of
upholding a judgment of conviction.

22 8 G.C.A. § 120.46. Pursuant to the terms of the Plea Agreement, however, Defendant agreed to
23 waive his right to move for a reduction of sentence under section 120.46. *See* Plea Agreement ¶
24 12 (“Defendant understands that he has a right to move for a reduction of his sentence within
25 one hundred twenty (120) days of sentencing pursuant to 8 GCA § 120.46, and agrees to waive
26 that right for the purpose of this plea.”). Defendant does not argue that the sentence imposed
27 was illegal. Defendant moves for a reduction of sentence arguing that he has “acknowledged
28 his crime and sin,” “he has taken responsibility for his actions,” “his rehabilitation is already

1 complete or nearly so,” and “[h]is victim sister has indicated she would be satisfied with less
2 than the ten year maximum he has been sentenced to.” (Mot. Reduce at 2). Defendant requests
3 for leniency from the Court and attaches a letter from Defendant’s girlfriend Ms. Roxanne G.
4 Rapgeg in support of his request.

5 At Sentencing, the Court was informed of the victim’s position regarding Defendant’s
6 sentence and that she was okay if he were to be sentenced to five years. The Court, however,
7 after considering the facts of the case and the young age of the victim at the time of the offense,
8 sentenced Defendant to ten (10) years. The Court finds that Defendant was given an
9 appropriate and just sentence at the time of sentencing and does not find any basis to disturb that
10 sentence. The Court therefore denies Defendant’s Motion for Reduction of Sentence.

11 **CONCLUSION**

12 For the foregoing reasons, the Court hereby DENIES Defendant’s Motion for Reduction
13 of Sentence.

14 **IT IS SO ORDERED** this 21st day of November, 2022.

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18 HONORABLE VERNON P. PEREZ
19 Judge, Superior Court of Guam
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