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CLERK OF COURT

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IN THE SUPERIOR COURT OF GUAM

THE PEOPLE OF GUAM,

vs.

NICHOLAS WAYNE MOORE

Defendant.

Case No. CF0313-21

**DECISION AND ORDER  
(Motion for Release with Conditions)**

**INTRODUCTION**

This matter came before the Honorable Alberto E. Tolentino on Nicholas Wayne Moore's ("Defendant") Motion for Release with Conditions ("Motion for Release"). Attorneys David J. Lujan, William L. Gavras, and Michael F. Phillips appeared for Defendant. Assistant Attorney General Sean E. Brown appeared for the People of Guam ("People"). In accordance with its ruling from the bench on October 31, 2022, the Court now issues the following order **DENYING** Defendant's Motion for Release.

**BACKGROUND**

On June 29, 2021, the People filed a Magistrate's Complaint charging Defendant with the following: (1) Two Counts of Aggravated Assault (As a Second Degree Felony) with Two Counts of the Special Allegation: Deadly Weapon Used in the Commission of a Felony; (2) Terrorizing (As a Third Degree Felony) with the Special Allegation: Deadly Weapon Used in the Commission of a Felony; and (3) Possession of an Unregistered Firearm (As a Third

1 Degree Felony). Mag. Compl., June 29, 2021. On June 29, 2021, Defendant appeared before  
2 the Court for a preliminary hearing and the Court set bail at \$100,000. Minute Entry, June 29,  
3 2021. Defendant posted bail and the Court ordered Defendant released on his own  
4 recognizance, provided that he abide by the conditions of release. Minute Entry, June 30,  
5 2021. Among other things, Defendant's conditions of release included: complying with  
6 electronic monitoring; remaining on house arrest; reporting to Adult Probation Services  
7 ("Probation") three times a week; and not consuming any alcohol or drugs. Order of  
8 Conditional Release and Appearance Bond, June 30, 2021.

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10 Probation filed a first violation report after Defendant failed to comply with the  
11 conditions of electronic monitoring by making an unauthorized stop. 1st Violation Report,  
12 Mar. 17, 2022. Probation filed a second violation report when Defendant refused to submit to  
13 a random urinalysis sample. 2nd Violation Report, June 16, 2022. Probation filed a third  
14 violation report when Defendant again refused to submit to a random urinalysis sample. 3rd  
15 Violation, June 17, 2022. Probation filed a fourth violation report after Defendant tested  
16 positive for illegal drugs. 4th Violation Report, June 17, 2022. Probation filed a fifth violation  
17 report after Defendant failed to comply with the conditions of electronic monitoring by making  
18 an unauthorized stop. 5th Violation Report, July 13, 2022. On June 16, 2022, Defendant  
19 failed to appear at Jury Selection. Minute Entry, June 16, 2022. The Court held a violation  
20 hearing and the Court imposed the additional condition that Defendant have a third-party  
21 custodian. Minute Entry, July 18, 2022; Minute Entry, July 20, 2022. Defendant never  
22 informed the Court that Probation approved of two people to serve as his third-party  
23 custodians, and thus, Defendant remained in custody. Defendant filed the instant motion.  
24 Def.'s Mem. Of P. & A. In Supp. Of His Mot. for Release With Conditions, Oct. 28, 2022.  
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1 The Court held a Motion Hearing. Minute Entry, Oct. 31, 2022. Upon considering the parties  
2 arguments and the applicable law, the Court denied Defendant's Motion for Release. *Id.*

### 3 DISCUSSION

4 Under Guam law, there is a presumption that a defendant charged with an offense will be  
5 released pending trial. 8 G.C.A. § 40.10. In all instances, the "[Court] shall order the person  
6 charged to be released on recognizance, unless the [Court] determines, in [its] discretion, on the  
7 basis of available information, that such a release will not reasonably assure the appearance of  
8 the person as required or will endanger the safety of any other person or the community." 8  
9 G.C.A. § 40.15(b). In determining whether there is a substantial risk of nonappearance or if a  
10 defendant will endanger the safety of individuals in the community, the Court "shall consider the  
11 following factors:  
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- 14 (1) the nature of the offense charged, the apparent possibility of conviction  
15 and the likely sentence;
  - 16 (2) the history and characteristics of the person charged . . .
  - 17 (3) the nature and seriousness of the danger the person would pose to the  
18 community or to any individual member thereof if released; [and]
  - 19 (4) any other factors which bear on the risk of willful failure to appear or the  
20 danger the person would impose to the community or to any individual  
21 member thereof if released."  
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23 8 G.C.A. § 40.15(c). If release on personal recognizance will not reasonably assure Defendant's  
24 appearance as required, or will endanger the safety of any individuals in the community, the  
25 Court shall impose the least onerous conditions of release. 8 G.C.A. § 40.20.

1 After reviewing all available information, the Court finds that pre-trial release with the  
2 condition that Defendant have two third-party custodians is the least onerous condition  
3 impossible for the following reasons. Defendant argues that he is completing his fourth month  
4 of incarceration, which is an unfair sanction for violating his pre-trial release conditions. Def.'s  
5 Mem. Of P. & A. In Supp. Of His Mot. for Release With Conditions at 1. The Court did not  
6 order Defendant remain in custody as sanctions for violating his pre-trial release conditions.  
7 Defendant is in custody because he has not presented the Court with two people approved by  
8 Probation to be his third-party custodians. Defendant argues that the unauthorized stops he made  
9 while on electronic monitoring were ten minutes or less, but the Court notes that ten minutes is  
10 long enough to obtain illegal drugs. Defendant tested positive for illegal drugs while on  
11 electronic monitoring, which means that he was able to obtain illegal drugs while on electronic  
12 monitoring and house arrest. The Court delayed jury selection after Defendant consumed illegal  
13 drugs, and the Court is concerned that could happen again. The Court believes that a third-party  
14 custodian could ensure that Defendant does not have access to illegal drugs. Likewise,  
15 Defendant contends the day he failed to appear at jury selection he overslept. A third-party  
16 custodian could prevent Defendant from failing to appear at trial again. Therefore, the Court  
17 maintains that if Defendant can present the Court with two people who have been approved by  
18 Probation to serve as his third-party custodians the Court will order Defendant released from  
19 custody.  
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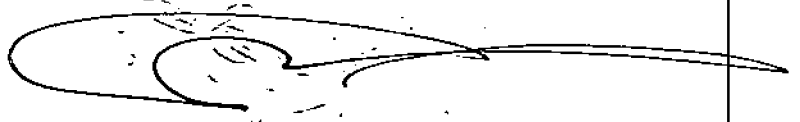
22 Lastly, Defendant states that trial has gone on for "months." Digital Recording at  
23 11:25:19–11:45:57 (Mot. H'rg. Oct. 31, 2022). The Court notes that few of the trial delays are  
24 attributed to the Court and the People. The Court has been generous in accommodating  
25 Defendant's requests to continue trial, including continuing trial when Attorney Lujan was sick,  
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1 continuing trial when defense counsel was not prepared to cross-examine the witnesses the  
2 People planned on calling, and granting multiple continuances to allow Defendant ample time to  
3 prepare various motions.  
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5 **CONCLUSION AND ORDER**

6 For the above reasons, the Court **DENIES** Defendant's Motion for Release.

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8 SO ORDERED, this 28<sup>th</sup> day of November 2022.

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12 HONORABLE ALBERTO E. TOLENTINO  
13 Judge, Superior Court of Guam  
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