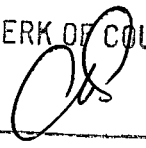


FILED
SUPERIOR COURT
OF GUAM

2022 AUG -2 AM 10: 39

CLERK OF COURT

BY: _____



IN THE SUPERIOR COURT OF GUAM

PEOPLE OF GUAM,

v.

TONDER ROBY
(*aka Tender Roby*),
DOB: 06/23/1981

Defendant.

CRIMINAL CASE NO.: CF0543-12

DECISION AND ORDER
*Defendant's Motion to Reconsider
& Reduce Sentence*

INTRODUCTION

This matter came before the Honorable Arthur R. Barcinas on April 14, 2022, for a hearing on Defendant's Motion to Reconsider and Reduce Sentence. Present at the hearing were: Defendant Tonder Roby ("Defendant") with counsel Alternate Public Defender Ana Marie Gayle, and Assistant Attorney General David Rivera for the People. Having considered the arguments, beliefs, and the applicable law, Defendant's Motion to Reconsider and Reduce Sentence is hereby **DENIED**.

1 **BACKGROUND**

2 This case arises from an Indictment charging Defendant with CRIMINAL MISCHIEF
3 TO A VEHICLE (As a 3rd Degree Felony), filed on September 18, 2012.

4 On April 20, 2016, Defendant entered a guilty plea to CRIMINAL MISCHIEF (As a
5 Misdemeanor) as a lesser included offense of CRIMINAL MISCHIEF TO A VEHICLE (As a
6 Third Degree Felony), and was sentenced according to the terms of the August 18, 2015, Offer
7 Letter. A Judgement reflecting the same was later filed on April 21, 2016. *See* Judgment (April
8 21, 2016).

9 A First Violation Report was filed on June 14, 2016, reflecting that Defendant failed to
10 report in person for the month of May 201[6] [sic]. *See* First Viol. (Jun. 14, 2016). A restitution
11 hearing was held on June 16, 2016, where Defendant failed to appear. As a result, the Court
12 issued a warrant for Defendant's arrest and set bail at \$1,300.00.

13 A Return of Warrant Service was filed on December 7, 2021, in which the deputy
14 marshal indicated that Defendant was arrested by the Guam Police Officers and later
15 transported to the Department of Corrections. *See* Return of Warrant Serv. (Dec. 7, 2021).
16 Then on December 15, 2021, a return of warrant hearing was held on wherein the Court
17 remanded Defendant and scheduled a hearing on the First Violation for February 10, 2022.

18 At the February 10, 2022, violation hearing, Defendant represented that he was
19 attempting to join his wife off-island. However, Defense counsel reported that Defendant had
20 no excuse for failing to complete probation. *See* Min. Entry 2:40:50PM (Feb. 10, 2022). As a
result, the Court revoked Defendant's probation and imposed the sentence set forth in the April
21, 2016, Judgment—one (1) year incarceration—with credit for time served since the return
of warrant. *See* Min. Entry 2:42:51PM (Feb. 10, 2022).

1 Then about 15 days later, on February 25, 2022, Defendant filed the instant Motion. A
2 hearing on the Motion was held on April 14, 2022, where the People orally argued in
3 opposition. Probation also reported that Defendant has two other cases: CF0365-12, which is
4 closed and now exists as RS0004-22 with all obligations outstanding, including restitution
5 owed to the victim; and CM0120-14, which is closed and now exists as RS0017-22. The Court
6 then took the matter under advisement.

7 DISCUSSION

8 **I. REDUCING SENTENCE TIMES**

9 Title 8 GCA section 120.46 governs the correction or reduction of sentences and states:

10 The court may correct an illegal sentence at any time and may correct a sentence
11 imposed in an illegal manner within the time provided herein for the reduction of
12 sentence. *The court may reduce a sentence within one hundred twenty (120) days after
13 the sentence is imposed*, or within one hundred (120) days after entry of any order or
14 judgment of the Supreme Court of Guam, having the effect of upholding a judgment of
15 conviction.

16 8 GCA §. 120.46 (emphasis added). The term “sentence is imposed” as used in Title 8 GCA
17 section 120.46, should be interpreted to mean the oral pronouncement of sentence. *People of
18 Territory of Guam v. Cepeda*, 1986 WL 68898 *3 (Dist. Ct. Guam 1986).

19 Here, the Court imposed the one (1) year sentence at the hearing on February 10, 2022,
20 and Defendant made the instant Motion about 15 days thereafter on February 25, 2022.
Therefore, the instant motion is timely.

However, the Court is not persuaded by Defendant’s Motion. Defendant hangs the
instant Motion on an apology to the Court for not following the Court’s orders and failing to
check in. Further, without prior demonstration to comply with the conditions set forth in the
Judgment and the Court’s orders, Defendant has the impudence to request the Court to now
allow him to (1) pay the amount owed, and (2) reduce his sentence to time served. *See* Def’s

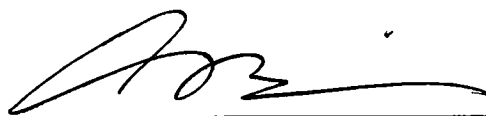
1 Mot. p. 2 (Feb. 25, 2022). The record reflects that Defendant executed his change of plea on
2 April 20, 2016, and a First Violation for failure to report for the following month was filed on
3 June 14, 2016. A warrant of arrest was then issued during a hearing two days later on June 16,
4 2016. More than five (5) years later, a Return of Warrant Service was finally executed and
5 filed on December 7, 2021, which reflected that Defendant was arrested by the Guam Airport
6 Police. It was further revealed that Defendant was attempting to join his wife off-island when
7 he was arrested.

8 The state of the record illustrates to the Court that Defendant (1) almost immediately
9 violated the conditions set forth in the Judgment, (2) made no effort to perform his obligations
10 pursuant to the Judgment, (3) was missing for more than five (5) years, and (4) was arrested at
11 the airport after trying to leave Guam. Nothing on the record justifies nor supports Defendant's
12 forward request in his Motion. For the Court to grant the instant Motion would be for
13 Defendant to escape accountability for his outstanding obligations, and the just resolution of
14 the case. As such, the Court is not persuaded by Defendant's Motion, and the Motion is hereby
15 **DENIED**. The Court's decision is further supported by the fact that Defendant's Motion fails
16 the standard for a motion for reconsideration as set forth in the Guam Local Rules CR 1.1.

17 CONCLUSION

18 For the reasons set forth above, the Defendant's Motion to Reconsider & Reduce
19 Sentence is hereby **DENIED**.

20 **IT IS SO ORDERED** AUG 02 2022 .



HONORABLE ARTHUR R. BARCINAS
Judge, Superior Court of Guam