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SUPERIOR COURT
OF GUAM

IN THE SUPERIOR COURT OF GUAM

PEOPLE OF GUAM,

vs.

NITASHA MARIE CRUZ MARTINEZ,
DOB: 12/04/1990

Defendant.

) CRIMINAL CASE NO. CF0076-23
) GPD Report Nos. 22-25069/23-02942/21-14603/23-
) 02941

DECISION & ORDER
RE. MOTION TO DISMISS

This matter came before the Honorable Alberto E. Tolentino on August 29, 2024, for a Further Proceedings. Defendant Nitasha Marie Cruz Martinez (“Defendant”) was present via Zoom with counsel Attorney Dean Manglona. Assistant Attorney General Kathleen O’Neil was present for the People of Guam (“People”). During the hearing, the court addressed the Defendant’s Motion to Dismiss. Following the hearing, the court took the matter under advisement pursuant to Supreme Court of Guam Administrative Rule 06-001, CVR 7.1(e)(6)(A) and CR 1.1 of the Local Rules of the Superior Court of Guam. Having duly considered the parties’ briefings, oral arguments, and the applicable law, the court now issues this Decision and Order **DENYING** the Defendant’s Motion to Dismiss.

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BACKGROUND

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2 The Defendant was charged with Theft By Receiving (As a Petty Misdemeanor) for events
3 that occurred on or about January 31, 2023.¹ The Public Defender Service Corporation (“PDSC”)
4 was originally appointed as counsel for the Defendant in this case.² Due to a conflict of interest,
5 PDSC withdrew its representation leading the court to appoint Attorney James Spivey as counsel
6 for the Defendant.³ The court set August 21, 2023, as the deadline for counsels to exchange
7 discovery or file a Motion to Compel Discovery.⁴ However, on November 22, 2023, the court
8 appointed Attorney Joyce Tang as counsel for the Defendant.⁵

10 On July 3, 2024, the Court ordered the People to provide discovery to the Defendant by
11 the close of business that same day.⁶ Two days later, the Defendant filed her Motion to Dismiss
12 (“Motion”) the petty misdemeanor charge contained in the Indictment; which would essentially
13 dismiss the case against her as this was the only charged filed against her.⁷ The basis of the Motion
14 was the People’s failure to timely produce discovery after the court had ordered them to do so on
15 July 3, 2024.⁸ The People filed its Opposition to the Motion (“Opposition”) on July 19, 2024. The
16 court addressed the Motion on August 29, 2024, and took it under advisement. The Defendant
17 then filed her Reply to the Opposition (“Reply”) the following day.
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25 ¹ Indictment (Feb. 17, 2023).

26 ² Notice of Court Appointed Counsel (Feb. 1, 2023).

27 ³ Arraign. Hr’g Mins. at 10:18:14AM (Mar. 1, 2023).

28 ⁴ Criminal Trial Scheduling Order (Mar. 27, 2023).

⁵ Notice of Court Appointed Counsel (Nov. 22, 2023).

⁶ Further Proceedings Mins. at 11:01:40AM (July 3, 2024).

⁷ Mot. Dismiss (July 5, 2024).

⁸ *Id.*

DISCUSSION

A. The People violated its discovery obligation to the Defendant.

8 GCA § 70.10(a) states that upon the defendant’s noticed motion, the court shall order the People to disclose to defense counsel “material and information within his possession or control, the existence which is known, or by the exercise of due diligence may become known to the prosecuting attorney.” Further, all parties have a continuing duty to disclose to the other party, attorney, or the court “additional material or information *previously requested or ordered*, which is subject to disclosure.” 8 GCA § 70.40 (emphasis added).

Although the People submitted discovery to PDSC back in 2023, who was still appointed at that time, there was no record demonstrating that the People or previously appointed counsels submitted discovery to either James Spivey or Joyce Tang upon their respective court appointments. Opp’n, Ex. A (July 19, 2024). However, since Attorney Joyce Tang’s appointment on November 22, 2023, she has not filed a Motion to Compel Discovery. The parties first addressed discovery on the record on March 27, 2024:

MANGLONA: I’ve had a chance to speak with the prosecutor in this case and we are going to look into whether discovery’s been provided. I don’t think my office has received discovery yet. And also, we are open to a plea deal. We just need to get an offer on the table.

THE PEOPLE: In turn, that is both true. We will verify that discovery was sent out to counsel. I don’t see that immediately in my file once they were appointed in this matter.

Further Proceedings Mins. at 10:38:11–38:40AM (Mar. 27, 2024).

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1 When the court continued this Further Proceedings to July 3, 2024, the Defendant
2 informed the court that her counsel's office still had not received discovery after the last request
3 approximately four months earlier. The record was set out as follows on the matter:

4 MANGLONA: And your honor, it doesn't appear we've received discovery from
5 the government. So, we're still waiting on that; on a request made back in March.

6 COURT: On a 2023 case? Okay, that's not right. Understanding that this has gone
7 through a couple of lawyers, or one other lawyer. But the court will order that
8 discovery be provided to Mr. Manglona's Office on or before close of business
9 today. So, they have at least something to go on, aside from an indictment that
10 accuses his client of theft by receiving as a petty misdemeanor. Okay? August 30th
at 2:00PM. Alright? Mr. Manglona, if you haven't received the discovery, you can
make an appropriate motion, okay?

11 Further Proceedings Mins. at 11:04:05–04:57AM (July 3, 2024). Two days later, the Defendant
12 then filed her Motion, arguing that she had not received discovery from the People after making
13 requests on January 31 and March 27 of 2024, and the court's order on July 3, 2024. Mot. Dismiss
14 at 2 (July 5, 2024). In the contrary, the People argue that they had no notes regarding discovery
15 for Further Proceedings held on January 31⁹ and July 3 of 2024. Opp'n at 2 (July 19, 2024).

17 The People submitting discovery on the same day as it filed its Opposition, in spite of the
18 court's order and previous requests made on the record, is a clear discovery violation. Based on
19 the court's record and the parties' pleadings, the court finds that the People failed to comply with
20 its discovery obligation to the Defendant.

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22 **B. Dismissal is not an appropriate sanction against the People in this case.**

23 If the court becomes aware that a party has failed to comply with a court order, "the court
24 may order such party to comply with the prior order, grant a continuance, or issue such other
25 order as it deems just under the circumstances." 8 GCA § 70.45.
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28 ⁹ In its Opposition, the People stated in error that the hearing occurred on January 1, 2024; the court held no hearings
for this case in January until January 31, 2024.

1 When trial judges select a sanction to impose against counsel, the Guam Supreme Court
2 has iterated that the appropriate sanction is “proportionate to the misconduct.” *People v. Tuncap*,
3 1998 Guam 13 ¶ 24 (quoting *United States v. Gee*, 695 F.2d 1165, 1169 (9th Cir. 1983)). In
4 addition, the trial court should impose the least severe sanction to achieve “prompt and full
5 compliance with the court’s discovery orders.” *Id.* (quoting *United States v. Sarcinelli*, 667 F.2d
6 5, 7 (5th Cir. 1982)).

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8 The People argue in its Opposition that when complying with the discovery requirements
9 in this case, dismissal is an extreme sanction against the People. Opp’n at 2 (July 19, 2024).
10 However, as this court just found, the People did not comply with discovery requirements in this
11 case. During a Further Proceedings, the parties made the following record regarding the proper
12 remedy in this case for untimely discovery:

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14 MANGLONA: Yes, Your Honor. This is a petty misdemeanor case. Our position
15 is that this case should be dismissed for reasons set forth in our motion, Your
16 Honor; because the People failed to timely produce discovery in this case despite
17 prior requests for them. And the People’s Opposition is really that ‘dismissal would
18 be an extreme sanction.’ We don’t think so. We think this would be a slap on the
19 wrist. I think it was Ms. Kristine Borja who previously represented the People, and
20 in the process of negotiating, she was working on some plea offer. We haven’t
21 received any yet. So, that’s where we are.

22 COURT: So, your office is claiming that, or asserting that, discovery in this case
23 was not received?

24 MANGLONA: It was untimely produced. The court had ordered that the Attorney
25 General’s Office produce discovery by July 4th or 5th. They did not until July 19.
26 It’s in violation of the court’s order. That’s what prompted the Motion to Dismiss.

27 THE PEOPLE: Your Honor, I believe that this was previously assigned to an
28 Attorney Spivey.

 COURT: He passed away.

 THE PEOPLE: Right. And discovery was provided to him, which should have
 forwarded to counsel; but it wasn’t. We have provided it, and I don’t think that’s
 grounds for dismissal.

1 COURT: In contravention of the court's order that it be delivered on or before July
2 3rd? I think it was?

3 MANGLONA: That's correct, Your Honor.

4 PEOPLE: I mean there could be other remedial sanctions, but dismissal is not
5 warranted.

6 MANGLONA: Your Honor, this is a petty misdemeanor case. We spent over a year
7 on this case. I've asked discovery before. And it's because of this prior request, that
8 the court ordered the people to produce it within a day. They didn't do that. They
waited until the 19th of July when they filed their Opposition.

9 Further Proceedings Mins. at 2:18:42–21:10PM (August 30, 2024). As the record reflects, the
10 Defendant argues that dismissal is an appropriate sanction in this case. However, dismissal is
11 deemed an extreme sanction, because it would prevent the case from going forward on its merits.
12 *Tuncap*, 1998 Guam 13 ¶ 27. Unless there is “flagrant and prosecutorial misconduct,” dismissing
13 an indictment is not an appropriate sanction. *People v. Naich*, 2013 Guam 7 ¶ 33 (quoting *United*
14 *States v. Jacobs*, 855 F.2d 652, 655 (9th Cir. 1988)). The Guam Supreme Court has found that
15 the better policy when applying sanctions is to choose one that “affect[s] the evidence at trial and
16 the merits of the case as little as possible.” *People v. Martinez*, 2017 Guam 23 ¶ 14 (quoting
17 *Tuncap*, 1998 Guam 13 ¶ 23 (citation and internal quotation marks omitted)).
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20 To decide whether a sanction like dismissal is an appropriate sanction for a discovery
21 violation, the court utilizes the following factors enumerated in *United States v. Sarcinelli*: (1)
22 reasons why the disclosure was not made; (2) the extent of the prejudice, if any, to the opposing
23 party; (3) the feasibility of rectifying that prejudice by a continuance, and (4) any other relevant
24 circumstances. *Martinez*, 2017 Guam 23 ¶ 15; *see also Naich*, 2013 Guam 7 ¶ 31.
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26 The first factor considers the reasons why disclosure was not made. Albeit untimely, the
27 discovery in this case was disclosed to the Defendant. However, the People's reasons for the
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1 untimely disclosure include the absence of any notes by the People regarding outstanding
2 discovery, as well as, “any email to the Office of the Attorney General service email or letter in
3 the file that show that previous counsels had not forwarded the discovery to current counsel.”
4 Opp’n at 2. Even with the lack of notes or emails from opposing counsel, the several requests by
5 the Defendant and a court order to the People prove that discovery was still outstanding. This
6 factor weighs in favor of dismissal.
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8 The second factor looks at the extent of prejudice, if any, to the opposing party. Here, the
9 Defendant has been waiting over year to resolve this petty misdemeanor case. However, since
10 counsel Joyce Tang had been appointed to this case, she had not filed a Motion to Compel
11 Discovery before seeking dismissal of the case altogether. The court does not view the People’s
12 untimeliness in this matter as so prejudicial that a sanction like dismissal is appropriate. Although
13 the Defendant is released in this case, she still has been prejudiced. This factor weighs against
14 dismissal.
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16 The third factor asks to determine whether a continuance of the trial is a feasible
17 rectification of the Defendant’s prejudice. The Defendant waived her right to speedy trial on
18 March 15, 2023. Arraign. Hr’g Mins. at 10:10:11AM (Mar. 15, 2023). After the court appointed
19 Attorney Spivey to this case, the court filed its Criminal Trial Scheduling Order on March 27,
20 2023, setting a date for Jury Selection and Trial on November 1, 2023. Criminal Trial Scheduling
21 Order (Mar. 27, 2023). But since then, there has been no movement towards trial or intent to
22 resolve this case through a trial. At the most recent Further Proceedings, the Defendant
23 acknowledged that she was still waiting for an offer from the People in a Plea Agreement. Further
24 Proceedings Hr’g Mins. at 2:13:44PM (Oct. 4, 2024). However, the Defendant still had no
25 expressed any intent to proceed with trial since. This factor weighs against dismissal.
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1 The fourth factor takes into account other relevant circumstances when determining an
2 appropriate sanction. The court agrees that the People have not shown how it complied with
3 discovery requirements, considering it sent discovery over two weeks after the court ordered it to
4 do so by close of business. Since the People had initially sent discovery to the first appointed
5 attorney – PDSC – the court has subsequently appointed two different attorneys as the
6 Defendant’s counsel; and different Assistant Attorney Generals have handled this matter for the
7 People. Although the court does recognize a violation was made, the court does not find that the
8 People’s untimely disclosure of discovery constitutes as “flagrant and prosecutorial misconduct”
9 given these circumstances. This factor weighs against dismissal.
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11 After applying the *Sarcinelli* factors to dismissal as the Defendant’s proposed sanction,
12 the court finds that dismissal would not be an appropriate sanction in this case.
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CONCLUSION

The court hereby **DENIES** the Defendant's Motion to Dismiss. In the event this matter proceeds to trial, the court further **ORDERS** that all discovery material that the Defendant untimely received may not be used for any purpose by the People of Guam.

SO ORDERED this 10/31/2024.



HONORABLE ALBERTO E. TOLENTINO
Judge, Superior Court of Guam

SERVICE VIA EMAIL

I acknowledge that an electronic copy of the original was e-mailed to:

AG, Civile & Tano

Date: 10/31/24 Time: 4:14 pm

Antonio P. Cruz
Deputy Clerk, Superior Court of Guam