

FILED
SUPERIOR COURT
OF GUAM

2019 APR -9 AM 9:52

CLERK OF COURT

By: AM

IN THE SUPERIOR COURT OF GUAM

THE PEOPLE OF GUAM,

vs.

MACKY ILAB DEMEI aka Machy aka
Mackey,

Defendant.

CRIMINAL CASE NO. CF0088-19

DECISION AND ORDER

INTRODUCTION

This matter came before the Honorable Vernon P. Perez on March 29, 2019, for hearing on Defendant Macky Ilab Demei aka Machy aka Mackey's ("Defendant") Motion and Application for Bail Redetermination Hearing Under 8 G.C.A. § 45.50(a) for Release on Personal Recognizance ("Motion for Bail Redetermination"). Defendant was present with counsel Assistant Public Defender Kristine Borja, and Assistant Attorney General Leonardo Rapadas was present on behalf of the People of Guam ("the Government"). In accord with its ruling from the bench on April 1, 2019, the Court now issues the following Decision and Order DENYING Defendant's Motion for Bail Redetermination.

BACKGROUND

On February 22, 2019, Defendant was indicted with the following charges: (1) Terrorizing (As a Third Degree Felony); (2) Family Violence (As a Third Degree Felony); (3) Violation of a Court Order (As a Misdemeanor); (4) Violation of a Court Order (As a Misdemeanor); (5) Violation of a Court Order (As a Misdemeanor); and (6) Violation of a Court

1 Order (As a Misdemeanor). (Indictment, Feb. 22, 2019). These charges stem from allegations
2 that Defendant threatened the victim, Jasynt Emengei Demei, with a machete, and slapped his
3 children in the face. (Decl. of Jeremiah B. Luther, Magistrate's Compl., Feb. 13, 2019). At the
4 time of these alleged offenses, Defendant was also under conditions of probation which
5 included stay away provisions from Jasynt Emengei Demei and the minor children in CF0658-
6 17. *Id.* See also, Plea Agreement in CF0658-17, Jul. 6, 2018; Judgment in CF0658-17, Jul. 12,
7 2018).

8 On March 18, 2019, Defendant filed the instant Motion for Bail Redetermination.
9 Defendant is confined pending the posting of \$5,000 cash bail. See Commitment Order, Feb.
10 13, 2019. The Government did not file a written response to the motion, but orally opposed the
11 motion on April 1, 2019. The Government noted that it hadn't had contact with the alleged
12 victim, despite attempts to do so, and was concerned about her safety should Defendant be
13 released.

14 DISCUSSION

15 Defendant moves the Court to release him on personal recognizance as he does not have
16 the means to pay the five thousand dollars (\$5,000.00) cash bail. See generally, Mot. Bail
17 Redetermination, Mar. 18, 2019.

18 Under Guam law, the Court must "order the person charged to be released on
19 recognizance, unless the judge determines, in his discretion, on the basis of available
20 information, that such a release will not reasonably assure the appearance of the person as
21 required or will endanger the safety of any other person or the community." 8 G.C.A. §
22 40.15(b). Factors for the Court to consider in determining whether Defendant presents a
23 substantial risk of nonappearance or is a danger to the safety of any other person or the
24 community include:

- 25 (1) the nature of the offense charged, the apparent possibility of conviction and
26 the likely sentence;
27 (2) the history and characteristics of the person charged, including:
28 (i) length of his/her residence on Guam;
(ii) his/her employment status and history, and financial condition;

- 1 (iii) his/her family ties and relationships;
2 (iv) his/her reputation, character and mental and physical condition;
3 (v) his/her prior criminal record, if any, including any record of prior
4 release on recognizance or on bail;
5 (vi) his/her history relating to drug or alcohol abuse;
6 (vii) the identity of the reasonable members of the community who will
7 vouch for his/her reliability;
8 (viii) whether at the time of the current offense or arrest, he/she was on
9 probation, on parole or on other release pending trial, sentencing,
10 appeal or completion of sentence of an offense under Federal, state
11 or local law; and
12 (ix) his/her history of compliance with other court orders;
13 (3) the nature and seriousness of the danger the person would pose to the
14 community or to any individual member thereof if released; and
15 (4) any other factors which bear on the risk of willful failure to appear or the
16 danger the person would pose to the community or to any individual member
17 thereof if released.

18 8 G.C.A. § 40.15(c).

19 If the Court finds that release on his or her own recognizance would not assure a
20 defendant's appearance or would present a danger to any other person or the community, the
21 Court may still permit release subject to certain conditions under 8 G.C.A. § 40.20. These
22 conditions include:

- 23 (a) placement of the person in the custody of a designated person or organization
24 agreeing to supervise him and to assist him in appearing in Court;
25 (b) placement of restrictions on the activities, movements, associations and
26 residence of the person;
27 (c) execution of a bond in an amount specified by the judge; such bond in the
28 discretion of the judge to be either unsecured or secured in whole or in part by
the deposit of cash or other property, or by the obligation of qualified sureties;
(d) release of the person during working hours, but with the condition that he
return to custody at specific times; or
(e) any other condition reasonably necessary to assure appearance as required and
the safety of any other person and the community.

8 G.C.A. § 40.20. Under section 40.20, the least onerous conditions shall be imposed to ensure
Defendant's appearance as required and the safety of any other person and the community.
"Determinations as to bail conditions and amounts are not to be driven by the goal of keeping

1 the accused incarcerated, but should rather be reached in consideration of the only authorized
2 interests, *to wit*, ensuring the appearance of the accused and the safety of others.” *People v.*
3 *Song*, 2011 Guam 19 ¶ 11.

4 In support of his motion, Defendant offers that that he is a thirty-three year old U.S.
5 Citizen who has resided on Guam for the past ten years, he has five minor children, and has two
6 jobs. (Mot. Bail Redetermination at 4). Defendant further offers that he was in contact with his
7 wife and children even though it was in violation of the conditions of his probation because his
8 family needed financial support. *Id.*

9 Upon consideration of the 8 G.C.A. § 40.15 factors, the Court is greatly concerned with
10 the safety of the community and Defendant’s ability to comply with Court orders. The Court is
11 concerned with Defendant’s ability to exert self-control, as he is currently accused of
12 threatening to kill the alleged victim with a machete, and four counts of Violation of a Court
13 Order. Although the Court had previously ordered a stay away in Defendant’s criminal case
14 CF0658-17, it is now alleged that Defendant did not comply with that order.

15 Thus, upon the Court’s review, Defendant’s release only on personal recognizance does
16 not sufficiently allay the Court’s concerns regarding the safety of the community and
17 Defendant’s ability to comply with Court orders. This decision, however, does not preclude
18 Defendant from requesting release with proposed third-party custodians in the future.

19 **CONCLUSION**

20 For the foregoing reasons, the Court hereby DENIES Defendant’s Motion for Bail
21 Redetermination. Further Proceedings are set for April 29, 2019 at 9:00 a.m.

22 **IT IS SO ORDERED**, *nunc pro tunc* to April 1, 2019, this APR 09 2019.

23
24
25 SERVICE VIA COURT BOX
I acknowledge that a copy of the
original hereto was placed in the
court box of

26 AG. PDSC

27 Date 4/19/19 Time 10:00

28 AM
Deputy Clerk, Superior Court of Guam



HONORABLE VERNON P. PEREZ
Judge, Superior Court of Guam