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By: 

IN THE SUPERIOR COURT OF GUAM

THE PEOPLE OF GUAM,)
)
 vs.)
)
 JASON JESUS CRUZ,)
 aka JJ,)
 DOB: 03/14/1983,)
)
 DEFENDANT.)

CRIMINAL CASE NO: CF0647-19
GPD Report Nos: 19-35032 / 19-11038

**DECISION AND ORDER RE:
DEFENDANT'S MOTION FOR
COMMITMENT ORDER AND
EXONERATION OF BAIL**

Introduction

This matter came before the Honorable Maria T. Cenzone on February 18, 2020, for a hearing on Defendant Jason Jesus Cruz's ("Defendant") Motion to Exonerate Cash Bail and Request for Commitment Order. Attorney Zachary C. Taimanglo of the Public Defender represented Defendant at the hearing and Assistant Attorney General Alysa Draper-Dehart represented the People of Guam. The People did not object to the Motion, however, a non-opposition does not "relieve the lower court of its duty to consider the merits of the motion before it."¹ Following oral argument and considering the basis for Defendant's Motion, the Court **GRANTED** the Motion from the bench and now issues the following DECISION and ORDER memorializing its oral ruling.

Background

Defendant is charged with Burglary (As a 2nd Degree Felony), Theft By Receiving (As a 2nd Degree Felony), Resisting Arrest (As a Misdemeanor), and Theft of Property (As a Misdemeanor). Magistrate's Compl. (Dec. 3, 2019). Magistrate Judge Jonathan R. Quan ordered

¹ *Quitugua v. Flores*, 2004 Guam 19 ¶27.

1 on December 3, 2019, that Defendant be held at the Department of Corrections (“DOC”) pending
2 trial and set bail at Three Thousand Dollars (\$3,000). Commitment Order (Dec. 3, 2019). On
3 December 19, 2019, a third party paid the Three Thousand Dollar (\$3,000) cash bail amount,²
4 and this Court released Defendant with conditions. Order of Conditional Release and
5 Appearance Bond (the “OCR”)(Dec. 19, 2019).

6 However, despite the OCR, DOC did not release Defendant because Defendant was
7 serving a term of parole and continued to be confined on the order of the Parole Board until his
8 parole was formally revoked. Mot. to Exonerate Cash Bail at 1 (Feb. 5, 2020). In support of his
9 Motion, Defendant explained that despite being released in this matter on December 19, 2019, he
10 was never physically released from the custody of DOC and that he would likely be eligible for
11 release by the Parole Board in July 2020. *Id.* Defendant therefore asked the Court to both
12 exonerate the cash bail paid on his behalf and further issue a commitment order backdated to
13 December 19, 2019, essentially nullifying the previous Conditional Release Order. Mot. to
14 Exonerate Cash Bail at 2. Defendant contends that because he continued to be incarcerated
15 despite the Court’s release order, he should be eligible for credit for time served. *Id.* The People
16 did not oppose his Motion.

17 Discussion

18 With respect to providing a Defendant in a criminal matter credit for time served during
19 pre-trial detention towards his sentence, Title 9, Guam Code Annotated, Section 80.46 provides,
20 in relevant part, as follows:

21 § 80.46. Credit for Prior Detention. (a) When an offender who is
22 sentenced to imprisonment has previously been detained in any
23 territorial state or local correctional or other institution, for the
24 conduct for which such sentence is imposed, such period of
detention shall be deducted from the maximum and minimum term
of such sentence. ...

25 9 G.C.A. § 80.46 (Emphasis added). The Guam Supreme Court has interpreted this provision as
26 a mandate; therefore, a Defendant serving his sentence must receive the benefit of a credit

27 _____
28 ² Bill Receipt Payment (Dec. 19, 2019).

1 applied by calculating the days detained in the custody of the Department of Corrections (DOC)
2 pending the adjudication of his offense. 9 GCA § 80.46 (2005); *People v. Mallo*, 2008 Guam 23
3 ¶ 24 (2008). “The plain meaning of this statute is that the credit for time served is obligatory.”
4 *Id.*; see also *People v. Corpuz*, 2019 Guam 1 ¶ 38 (2019). The Guam Supreme Court has also
5 construed this statute as permitting only time served “for the conduct for which such sentence is
6 imposed” to be deducted from the term of sentence. *People v. Manibusan*, 2016 Guam 40
7 (2016).

8 In *People v. Manibusan*, the Defendant was released from detention after posting a
9 \$5,000 cash bond in his initial case and, a few months after his release, was again arrested and
10 detained in a second case; however, his pre-trial release in the earlier case was never revoked.
11 2016 Guam 40 ¶¶ 13-22 (2016). Defendant was convicted of the first offense and during the
12 sentencing, the Defendant sought credit for the time he was held in the second offense. In
13 determining the calculation of time to be served by the Defendant for the sentence imposed for
14 the *first* crime, the trial court held, and the Supreme Court affirmed, that the defendant was *not*
15 entitled to include as credit for time served any time he served in the second case because his
16 pre-trial release in the first case was never revoked, nor had defendant asked for it to be revoked
17 while he was detained in the second matter, so as to receive such credit. *Id.* Thus, the Guam
18 Supreme Court held, the trial court did not abuse its discretion in *denying* a deduction for the
19 sentence in the first crime because he was not held for the conduct for which the period of
20 detention was imposed – the conduct was solely based upon the second offense. *Id.* at ¶ 22. It is
21 noteworthy that none of the parties moved the court to modify bail conditions for the earlier case
22 to allow for any credit to be accrued during the period of his physical detention. *Id.* at ¶21.

23 The case at bar is wholly distinguishable on its facts from the *Manibusan* case and the
24 context in which this court applies Section 80.46 has not been addressed by the Guam Supreme
25 Court. In the present matter, during the Magistrate’s Hearing on December 3, 2019, the
26 Magistrate Judge set bail in this case at \$3,000 cash. *Min. Entry* at 3:12:43 (Dec. 3, 2019). There
27 is nothing in the record indicating that the Defendant was on a parole hold at the time of the
28

1 magistrate hearing, or that the magistrate judge was aware that Cruz was on a parole hold at the
2 time he set bail. *Id.* Thus, the Commitment Order issued by the magistrate judge indicates at
3 “[upon] Posting of bail in the amount of \$3,000 Cash, [i]f bail is met, the defendant shall be
4 brought back before the court for conditions [of release].” *Commitment Order* (Dec. 3, 2019).

5 On December 19, 2019, when this court issued the Order of Conditional Release and
6 Appearance Bond following Cruz’s posting of the \$3,000 cash bail, the court was not aware that
7 Defendant continued to be detained on a parole hold. It is not certain if, at the time bail was
8 posted, that *Defendant* was aware that he was also on a parole hold. It is incontrovertible that he
9 did not have the benefit of posting the cash bail set by the magistrate judge because he continued
10 to be physically detained at the Department of Corrections. Had the court and the parties been
11 aware at the time of his release on December 19, 2019 that he would continue to be held, there
12 may have been a different outcome at the bail hearing, as may be inferred by the later filing of
13 the Motion to Exonerate Cash Bail and Request for Commitment filed on February 5, 2020.
14 Unlike the defendant in *Manibusan*, there was nothing that the Defendant *did* to require his
15 commitment after his “technical” release on December 19, 2019, except to remain in the custody
16 of DOC for another post-judgment (parole) matter for which the Court (and possibly the parties)
17 were unaware until months later.

18 Considering the circumstances in this case, as clearly distinguished from the ruling of the
19 Guam Supreme Court in *Manibusan*, the court finds that the Defendant is entitled to receive the
20 benefit of credit for time served notwithstanding the provisions of 9 G.C.A. §80.46 and,
21 therefore, finds that it is in the interest of justice and supported by law that Defendant’s Motion
22 to Exonerate Bail be granted, that the earlier OCR be revoked and that Defendant be committed
23 to the custody of DOC, to receive credit for any time served since his original commitment date
24 towards any sentence which may be imposed upon him for the conduct which is the subject of
25 this offense. The court shall issue an Order of Commitment order contemporaneously with this
26 decision.

1 Conclusion

2 For the foregoing reasons, the Court hereby **GRANTS** Defendant's Motion to Exonerate
3 Cash Bail; Request for Commitment Order and further **ORDERS** as follows:

4 (1) Bail posted on December 19, 2019, is hereby **EXONERATED** and shall be returned
5 to the party who posted said bail on Defendant's behalf;

6 (2) The Order of Conditional Release and Appearance Bond previously issued on
7 December 19, 2019, is **REVOKED**, *nunc pro tunc* to December 19, 2019;

8 (3) In addition to any days that Defendant served at DOC while confined in this matter
9 *prior to* the issuance of the Order of Conditional Release, Defendant shall continue to receive
10 credit for time served in this matter towards the satisfaction of any sentence which may be
11 imposed upon him in this case.

12 SO ORDERED this MAR 16 2020, *nunc pro tunc* to February 18, 2020.

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14 _____
15 HONORABLE MARIA T. CENZON
16 JUDGE, SUPERIOR COURT OF GUAM
17

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20
21 **SERVICE VIA COURT BOX**

22 I acknowledge that a copy of the
original hereto was placed in the
court box of:

23 AG Prosecution,
PDSC

24 Date: 3/16/20 Time: 12:00 pm
25 Antonio Cruz
Deputy Clerk, Superior Court of Guam
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