

BACKGROUND

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2 Based on events that occurred on or about July 17, 2017, the Defendant was charged with
3 POSSESSION OF A SCHEDULE II CONTROLLED SUBSTANCE (As a 3rd Degree Felony).
4 See Indictment (Aug. 7, 2017). As to this charge, the court deferred acceptance of the Defendant's
5 guilty plea. See Change of Plea Hr'g Mins. at 3:04:02 – 27:05PM (Nov. 16, 2018).¹
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7 Following the deferment of the Defendant's plea, the court returned the original Plea
8 Agreement for corrections. See Speed Memo (Dec. 6, 2018). That same month, the court issued
9 a bench warrant for the Defendant's arrest after the Probation Services Division ("Probation")
10 filed a first violation for his failure to refrain from ingesting or consuming illegal controlled
11 substances. See Progress Hr'g Mins. at 10:09:42 – 10:18AM (Dec. 31, 2018). However, six (6)
12 years passed before the bench warrant was returned. See Return of Warrant (Jan. 18, 2024). After
13 absconding from the court's supervision, the court suspended a thirty-day sanction and released
14 the Defendant from confinement. See Return of Warrant Hr'g Mins. at 9:12:22AM (Jan. 23,
15 2024).
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17 The Defendant subsequently received his second through sixth violations; all for testing
18 presumptive positive for methamphetamine.² After Probation filed his sixth violation, the parties
19 were before the court for a Progress Hearing on July 24, 2024. In that hearing, the court addressed
20 the lack of a filed Plea Agreement after Judge Sukola requested that it be resubmitted to reflect
21 her corrections. See Progress Hr'g Mins. at 2:51:00 – 3:02:20PM (July 24, 2024). Due to no filed
22 Plea Agreement, the court was unable to file its Order After Hearing. *Id.* Without an Order After
23 Hearing, Probation was unable to impose an expiration date for the Defendant's probationary
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28 ¹ At this time, the case was before the Honorable Anita A. Sukola.

² See 2nd Violation Report (Apr. 24, 2024); see also 3rd Violation Report (May 8, 2024); see also 4th Violation Report (June 3, 2024); see also 5th Violation Report (June 14, 2024); see also 6th Violation Report (June 27, 2024).

1 term. *Id.* Based on its record of the Defendant's Change of Plea hearing in 2018, Probation
2 informed the court that the Defendant had the following outstanding conditions: (1) Treatment
3 with New Beginnings; twenty-four (24) recovery support meetings; (3) a fine of Five Thousand
4 Dollars (\$5,000.00); (4) court costs of Eighty Dollars (\$80.00); and (5) One Hundred Fifty (150)
5 hours of community service. *Id.* Ultimately, the court ordered the People to prepare a Plea
6 Agreement incorporating Judge Sukola's corrections indicated within the original Plea
7 Agreement, which was returned to the Office of the Attorney General of Guam through a Speed
8 Memo. *Id.*

10 By the next Progress Hearing on October 23, 2024, the court addressed the Defendant's
11 seventh violation but noted that it had not received a corrected Plea Agreement in order to prepare
12 its Order After Hearing. *See* Progress Hr'g Mins. at 2:46:50 – 52:16PM (Oct. 23, 2024). Again,
13 the court requested the Assistant Attorney General in this hearing to review this case and submit
14 a corrected Plea Agreement before the next hearing. *Id.* However, the court issued a warrant of
15 arrest pursuant to the Defendant's eighth violation. *See* Warrant (Feb. 26, 2025).

18 At his Return of Warrant hearing on March 11, 2025, the court addressed the Defendant's
19 eighth violation as well as the absence of a corrected Plea Agreement. *See* Return of Warrant Hr'g
20 Mins. at 4:09:02 – 22:12PM (Mar. 11, 2025). After granting the Defendant's release, the Public
21 Defender assured the court that something could be drafted since its office had a digital copy of
22 the recording of the Change of Plea Hearing from 2018 before Judge Sukola. *Id.*

24 At the next hearing on May 23, 2025, the court addressed the Defendant's violations and
25 lack of a Plea Agreement once more. *See* Further Proceedings Mins. at 2:52:00 – 57:37PM (May
26 23, 2025). Although the People filed a proposed Order After Hearing, no Plea Agreement was
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1 filed along with it. *Id.* The court informed the parties that this would be the last continuance to
2 allow the parties to submit a corrected Plea Agreement before the next hearing in August. *Id.*

3 On August 20, 2025, the Defendant was not present at this Further Proceedings while the
4 court addressed the issue of the Plea Agreement. *See Further Proceedings Mins. at 11:19:02 –*
5 *25:53AM (Aug. 20, 2025).* The Public Defender informed the court that it received a formal Plea
6 Agreement from the People, memorializing the conditions imposed by Judge Sukola back on
7 November 16, 2018. *Id.* In response, the court granted its request for a short continuance to ensure
8 that the terms within the People’s proposed Plea Agreement align with Judge Sukola’s previously
9 imposed conditions. *Id.*

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11 On November 19, 2025, the People informed the court that the proposed Plea Agreement,
12 which was sent before the last hearing, was still pending the Defendant’s review and signature.
13 *See Further Proceedings Mins. at 10:36:23 – 46:30AM (Nov. 19, 2025).* The Defendant argued
14 that entering a plea at this point in the case would be “a miscarriage of justice;” and subsequently
15 made an oral motion to dismiss. *Id.* Because no Plea Agreement was filed, the court returned this
16 case back to pre-trial status and ordered the Defendant to comply with the previously imposed
17 conditions of pre-trial release. *Id.*

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19 The Defendant then filed a Motion to Dismiss Case due to Prosecutorial Misconduct for
20 Failure to Provide Plea Agreement as Ordered by Court at Court Proceedings (“Motion to
21 Dismiss”). On January 23, 2026, the People filed its Opposition to the Motion to Dismiss
22 (“Opposition”). Upon reviewing the pleadings, the court addressed the parties’ arguments
23 regarding the Motion to Dismiss.
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26 In the Motion Hearing, the Defendant argued that the interests of justice call for dismissal
27 of this case due to the People’s alleged prosecutorial misconduct in its failure to provide a Plea
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1 Agreement. *See* Mot. Hr'g Mins. at 3:37:12 – 40:35PM (Mar. 4, 2026). The Defendant also
2 argued that the five-thousand-dollar-fine previously imposed was “cruel and unusual” for
3 someone who is indigent and appointed the Public Defender to represent him. *Id.* The People do
4 not believe that the delay to submit a written Plea Agreement should result in dismissal, indicating
5 that the issues surrounding it were more administrative; as opposed to a disagreement between
6 the parties. *Id.* at 3:40:36 – 43:51PM. After hearing the parties’ arguments, the court took the
7 matter under advisement. *Id.* at 3:55:27 – 57:58PM.

9 DISCUSSION

10 “If the court becomes aware that a party has failed to comply with a court order, the court
11 may order such party to comply with the prior order, grant a continuance, or issue such other
12 order as it deems just under the circumstances.” 8 GCA § 70.45. When trial judges select a
13 sanction to impose against counsel, the Guam Supreme Court has iterated that the appropriate
14 sanction is “proportionate to the misconduct.” *People v. Tuncap*, 1998 Guam 13 ¶ 24 (quoting
15 *United States v. Gee*, 695 F.2d 1165, 1169 (9th Cir. 1983)).

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18 “The prosecutor’s misconduct was of such serious nature and was placed on record at
19 numerous hearings throughout the last two years, and yet as of this motion no resolutions [have]
20 been offered, no plea agreement received, prepared reflecting the acceptance of such plea related
21 to the November 2018 change of plea.” Def.’s Mot. Dismiss at 4. In its Opposition, the People
22 attached exhibits indicating efforts to redraft a plea in August of 2025 as well as a follow-up in
23 November of that same year. *See* Ppl.’s Opp’n, Ex. A. In light of this, the People argued that
24 looking at the unreasonable delay in this 2017 was warranted, citing to 8 GCA § 80.70 and *Barker*
25 factors to review whether such unreasonable delay warranted dismissal of this case. *Id.* at 3. “If
26 there is unnecessary delay in bringing a defendant to trial, the court, on its own motion, may
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1 dismiss the indictment, information or complaint.” 8 GCA § 80.70(b). Because the court
2 previously deferred the Defendant’s guilty plea rather than proceed with a trial, 8 GCA § 80.70
3 is not the appropriate authority to consider regarding this Motion to Dismiss.

4 The Defendant seeks dismissal of this case based on the “government’s failure to adhere
5 to numerous requests by the Court going back to the first request on record at the July 2024
6 hearing through the last hearing held in August 2025.” Def.’s Mot. Dismiss at 5. However,
7 dismissal is deemed an extreme sanction, because it would prevent the case from going forward
8 on its merits. *Tuncap*, 1998 Guam 13 ¶ 27. Unless there is “flagrant and prosecutorial
9 misconduct,” dismissing an indictment is not an appropriate sanction. *People v. Naich*, 2013
10 Guam 7 ¶ 33 (quoting *United States v. Jacobs*, 855 F.2d 652, 655 (9th Cir. 1988)).

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13 Upon reviewing this case’s history, this court requested for a corrected Plea Agreement
14 five (5) times. The first request was made after the Defendant had been missing from the court’s
15 supervision for six (6) years. The second request was made without objection from the Defendant.
16 When making a third request, the court granted a continuance based on the Public Defender’s
17 representation that it possessed a digital recording of the Defendant’s Change of Plea Hearing
18 before Judge Sukola; which it offered to share with the People. The court made a fourth request,
19 because the People filed a proposed Order After Hearing without a Plea Agreement to base it on.
20 As for the court’s fifth request for a written Plea Agreement, the Defendant confirmed that a
21 proposed Plea Agreement was sent by the People the day prior. However, both parties wanted the
22 Defendant to confirm that the People incorporated the correct terms within the proposed Plea
23 Agreement before it could be submitted for the court’s review.
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26 Despite the parties’ inability to submit a written Plea Agreement, the Defendant was aware
27 of the conditions imposed upon him when the court deferred acceptance of his guilty plea in 2018.
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1 For instance, the Defendant was aware that he was to refrain from ingesting or consuming illegal
2 controlled substances each time Probation filed a violation against him. Yet, all but two (2) of the
3 Defendant's violations of probation were for ingesting or consuming illegal controlled
4 substances.³ On the other hand, the Defendant was also aware of his outstanding fine and
5 treatment conditions, considering he paid off some of his fine and completed majority of his
6 recovery support meeting attendance.
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8 In light of both the People and the Defendant's performance throughout the duration of
9 this case, the court finds that the People failed to comply with the court's order to submit a written
10 Plea Agreement in this case. Despite the People's failed attempts to produce a conforming Plea
11 Agreement, the court finds that this failure was not the product of flagrant and prosecutorial
12 misconduct. Therefore, dismissal on these grounds would not be an appropriate sanction in this
13 case.
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27 ³ See 1st Violation Report (Dec. 31, 2018); see also 2nd Violation Report (Apr. 24, 2024); see also 3rd Violation
28 Report (May 8, 2024); see also 4th Violation Report (June 3, 2024); see also 5th Violation Report (June 14, 2024);
see also 6th Violation Report (June 27, 2024); see also 7th Violation Report (Sep. 19, 2024); see also 9th Violation
Report (Mar. 7, 2025); see also 10th Violation Report (Apr. 1, 2025); see also [12th] Violation Report; see also 13th
Violation Report (Aug. 6, 2025); see also 14th Violation Report (Nov. 7, 2025).

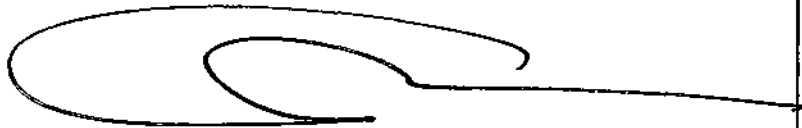
CONCLUSION

For reasons stated above, the court hereby **DENIES** the Defendant's Motion to Dismiss Case due to Prosecutorial Misconduct for Failure to Provide Plea Agreement as Ordered by Court at Court Proceedings.

The court further **ORDERS** that the parties shall submit a Plea Agreement **no later than June 8, 2026, by 5:00PM** in conformity with Judge Sukola's written corrections attached to the Speed Memo filed in this case on December 6, 2018.

A Progress Hearing is scheduled before this court on June 10, 2026, at 2:00PM.

SO ORDERED MAY 27 2026



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:

 OAG & PDSC

Date: 5/28/26 Time: 10:01

 Reineta M. Lindlau
Deputy Clerk, Superior Court of Guam