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By Order of the Court, Judge TERESA KIM-TENORIO

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**IN THE SUPERIOR COURT
 FOR THE
 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,)	CRIMINAL CASE NO. 23-0101 CRIMINAL CASE NO. 23-0102 CRIMINAL CASE NO. 23-0122
)	
Plaintiff,)	
)	
vs.)	ORDER DENYING DEFENDANT’S MOTION FOR COURT TO FIND DEFENDANT LEGALLY ELIGIBLE FOR DRUG COURT
MICHAEL AGUON MANALO,)	
)	
Defendant.)	
)	

I. INTRODUCTION

THIS MATTER came before the Court on July 2, 2024 at 1:30 p.m., in Courtroom 217A, at the Superior Court, Guma’ Hustisia, Susupe, Saipan, Commonwealth of the Northern Mariana Islands, for a hearing on Defendant’s Motion for Court to Find Defendant Legally Eligible for Drug Court. Assistant Attorney General Heather Barcinas represented the Commonwealth of the Northern Mariana Islands (“Commonwealth”). Michael Aguon Manalo (“Defendant”) appeared under the custody of the Department of Corrections and was represented by Assistant Public Defender Emily Thomsen.

Based on a review of the parties’ filings, oral arguments, and applicable law, the Court now issues this Order **DENYING** Defendant’s Motion for Court to Find Defendant Legally Eligible for Drug Court.

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II. BACKGROUND

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2 On April 3 and April 4, 2023, Defendant allegedly unlawfully entered Dial Rent to Own in
3 Chalan Kanoa and stole speakers. The Commonwealth charged Defendant with one (1) count of
4 Burglary and one (1) count of Theft in Criminal Case 23-0101. Defendant's restitution to Dial
5 Rent to Own is One Thousand Three Hundred Eighty-Seven dollars and Twenty cents
6 (\$1,387.20).

7 On April 6-10, 2023, Defendant allegedly unlawfully entered Safety Management Systems
8 and stole U.S. currency and store merchandise. The Commonwealth charged Defendant with one
9 (1) count of Burglary and one (1) count of Theft in Criminal Case 23-0102. Defendant's
10 restitution to Safety Management Systems is Two Thousand Ninety-Nine dollars (\$2,099.00).

11 On October 4, 2023, Defendant allegedly unlawfully entered New CK Market in Chalan
12 Kanoa and stole U.S. currency, food stamps, summer pandemic EBT coupons, cigarettes, food,
13 drinks, tools, equipment, a bicycle, and a cell phone. The Commonwealth charged Defendant with
14 one (1) count of Burglary and one (1) count of Theft in Criminal Case 23-0122. Defendant's
15 restitution to New CK Market is Five Thousand Five Hundred Forty-Six dollars and Fifteen cents
16 (\$5,546.15).

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18 Defendant's total restitution in Criminal Cases 23-0101, 23-0102, and 23-0122 is Nine
19 Thousand Thirty-Two dollars and Thirty-Five cents (\$9,032.35). On November 16, 2023,
20 Defendant's counsel referred him to the Office of the Attorney General ("OAG") for
21 consideration for the Drug Court Program. *See* Mot. for Ct. to Find Def. Legally Eligible for Drug
22 Ct., Ex. A. On November 28, 2023, the OAG returned a denial letter, stating that Defendant's
23 combined restitution rendered him ineligible for the Program. *See id.*, Ex. B.

24 On April 16, 2024, Defendant filed the instant Motion for Court to Find Defendant Legally
25 Eligible for Drug Court in Criminal Cases 23-0101, 23-0102, and 23-0103, alleging that the OAG

1 failed to properly consider eligibility requirements in the Drug Court Policies & Procedures
2 (“DCP P&P”), and that the OAG’s denial of Defendant’s eligibility was unreasonable. On June
3 11, 2024, the Commonwealth filed its Opposition to Defendant's Motion for Court to Find
4 Defendant Legally Eligible for Drug Court, initially contesting the validity of the most recent
5 DCP P&P¹ and highlighting the Commonwealth’s discretion to determine legal eligibility.
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7 III. LEGAL STANDARD

8 “A potential participant is not legally eligible for Drug Court if they have an outstanding
9 restitution obligation to an individual victim that exceeds Three Thousand Dollars. This limit
10 does not include restitution obligations to insurance companies, businesses, or other corporate
11 entities.” NMI J. DRUG CT. P. & P. § 3(c)(2)(B)(ii) adopted effective February 14, 2023.
12

13 The Drug Court Program’s initial legal eligibility determination is subject to the
14 Commonwealth’s discretion. *See Commonwealth v. Crisostomo*, Crim. No. 19-0080 (NMI Super.
15 Ct. May 26, 2022) (Ord. Den. Def.’s Mot. To Set Aside J. and Conviction Pursuant to Rule 32(d),
16 7). “When a potential participant is not compulsorily ineligible . . . the Commonwealth
17 determines . . . eligibility on a case-by-case basis and must consider the potential participant’s
18 criminal history.” *See Commonwealth v. Malabanan*, Crim. No. 16-0203 & 22-0038 (NMI Super.
19 Ct. August 25, 2022) (Ord. Den. Def’s Mot. For Court to Find Def. Legally Eligible for Drug Ct.,
20 2). The Court reviews the Commonwealth’s determination of legal ineligibility for abuse of
21 prosecutorial discretion, to determine whether the action was reasonable. *See id.*
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¹ At the July 2, 2024 hearing, however, the Commonwealth rescinded its arguments about the validity of the most recent DCP P&P.

1 Prosecutorial discretion is presumed to be lawful, and the presumption can only be
2 overcome with exceptionally clear proof that it has been abused. *See Nunes v. Ramirez-Palmer*,
3 485 F.2d 432, 442 (9th Cir. 2007). Prosecutorial Discretion is abused if it is arbitrary and
4 capricious and violative of due process. *See id.* An action is arbitrary and capricious if it is a
5 “willful and unreasonable action without consideration or in disregard of facts or without
6 determining principle.” *See In re Blankenship*, 3 NMI 209, 217 (1992).

8 IV. DISCUSSION

9 In *Crisostomo*, this Court found that the Drug Court Program’s initial legal eligibility
10 determination is subject to the Commonwealth’s discretion. *See Crisostomo*, Crim. No. 19–0080
11 at 7. Therefore, the primary issue now before the Court is whether the Commonwealth abused its
12 discretion when it determined Defendant to be legally ineligible for the Drug Court Program.

13 Defendant argued that the Commonwealth improperly denied him eligibility in Drug Court.
14 Defendant stated that the Commonwealth made its determination based on his large outstanding
15 criminal restitution.² *See* Def’s Mot. For Court to Find Def. Legally Eligible for Drug Ct., 1.
16 Defendant cited DCP P&P § 3(c)(2)(B)(ii), which holds that the restitution limit for eligibility in
17 Drug Court does not include obligations to businesses. *See id.*, 2. The Commonwealth initially
18 argued that the DCP P&P revision cited by Defendant is invalid. *See* Opp. to Def’s Mot. For
19 Court to Find Def. Legally Eligible for Drug Ct., 4. The Commonwealth rescinded this argument
20 at the July 2, 2024 hearing.

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22 The Commonwealth instead cited case law highlighting its discretion to determine legal
23 eligibility in Drug Court. *See Crisostomo*, Crim. No. 19–0080 at 7 (The Drug Court Program’s
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² Totaling Nine Thousand Thirty-Two dollars and Thirty-Five cents (\$9,032.35).

1 initial legal eligibility determination is subject to the Commonwealth’s discretion); *see also*
2 *Malabanan*, Crim. No. 22-0038 at 2 (“When a potential participant is not compulsorily ineligible .
3 . . . the Commonwealth determines . . . eligibility on a case-by-case basis and must consider the
4 potential participant’s criminal history”); *see e.g. United States v. Moody*, 778 F.2d 1380, 1385-
5 86 (9th Cir. 1985) (“The Decision whether to offer a plea bargain is a matter of prosecutorial
6 discretion”).

7 The Commonwealth considered Defendant’s criminal history and discovered convictions
8 spanning more than ten (10) years. *See* Opp. to Def’s Mot. For Court to Find Def. Legally
9 Eligible for Drug Ct., 4. Defendant was convicted of Receiving Stolen Property in Criminal Case
10 No. 12-0155. *See id.*, 8. Defendant was convicted of Burglary in Criminal Case No. 15-0010. *See*
11 *id.* “Further review of [Defendant’s] criminal history includes his admission to his involvement in
12 2 uncharged burglary and theft incidents.” *See id.* The Commonwealth determined that Defendant
13 has not paid any fees or made any payments towards his One-Thousand-Five-Hundred-dollar
14 (\$1,500) restitution order in Criminal Case No. 15-0010. *See id.* “Defendant is facing three (3)
15 felony cases with significant restitution liability.” *See id.* Having considered Defendant’s
16 unwillingness to make payments towards a One-Thousand-Five-Hundred-dollar (\$1,500)
17 restitution, the Commonwealth weighed the unlikelihood that Defendant’s restitution in the
18 instant matters³ would ever be paid. It then determined that Defendant did not meet the eligibility
19 requirements of the Drug Court Program. *See id.*

21 Defendant argues that the Commonwealth’s denial of his eligibility is unreasonable and an
22 abuse of prosecutorial discretion. *See* Mot. For Court to Find Def. Legally Eligible for Drug Ct., 3.
23 Prosecutorial discretion is presumed to be lawful, and the presumption can only be overcome with
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³ Totaling Nine Thousand Thirty-Two dollars and Thirty-Five cents (\$9,032.35).

1 exceptionally clear proof that it has been abused. *See Nunes v. Ramirez-Palmer*, 485 F.2d at 442.
2 Prosecutorial Discretion is abused if it is arbitrary and capricious and violative of due process. *See*
3 *id.* An action is arbitrary and capricious if it is a “willful and unreasonable action without
4 consideration or in disregard of facts or without determining principle.” *See In re Blankenship*, 3
5 NMI at 217.

6 Here, Defendant has not provided “exceptionally clear proof” that the Commonwealth
7 abused its prosecutorial discretion. While Defendant “is not compulsorily ineligible,” the
8 Commonwealth made its eligibility determination by “consider[ing] the potential participant’s
9 criminal history.” *See Malabanan*, Crim. No. 22-0038 at 2. The Commonwealth complied with this
10 Court’s decision in *Malabanan*. The Court does not find the Commonwealth’s determination a
11 “willful and unreasonable action without consideration . . . of facts or without determining
12 principle.” *See In re Blankenship*, 3 NMI at 217. The Commonwealth’s eligibility determination is
13 not arbitrary and capricious. It is therefore not an abuse of prosecutorial discretion.

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15 Furthermore, Drug Court eligibility is ultimately a component in a type of plea agreement.
16 the NMI Supreme Court held that a “defendant has no constitutional right to a plea bargain.” *See*
17 *Commonwealth v. Attao*, 2005 MP 8 ¶ 13. “The decision whether to offer a plea bargain is a matter
18 of prosecutorial discretion.” *Id.* “Requiring judicial review of the [prosecutorial authority’s]
19 decision not to plea bargain with a particular defendant, which is what [the potential Drug Court
20 participant] is asking this court to do, would result in a violation of the Separation of Powers
21 Clause. *Woodward v. Morrissey*, 991 P.2d 1042, ¶13 (Okla. 1999).

22 The United States and CNMI Constitutions create three (3) branches of government with
23 clearly delineated roles. *See* U.S. Const. art. I, art. II, art. III; *see also* CNMI Const. art. II, art. III,
24 art. IV. The Separation of Powers doctrine holds that each “branch ‘exercise[s] . . . the powers
25 appropriate to its own department,’ and no branch can ‘encroach on the powers confided to the

1 others.” See *Patchak v. Zinke*, 583 U.S. 244, 250 (2018) (quoting *Kilbourn v. Thompson*, 103 U.
2 S. 168, 191 (1881)). The CNMI OAG falls under the Executive Branch. See CNMI Const. art. III,
3 § 11. This Court falls under the Judicial Branch. See *id.*, art. IV, § 2. The DCP P&P vest legal
4 eligibility determinations with the OAG. See NMI J. DRUG CT. P. & P. § 3(c) adopted effective
5 February 14, 2023. Interfering with the OAG’s clearly delineated role without “exceptionally clear
6 evidence” of an impermissibly-based decision would violate Separation of Powers.

7 “Courts generally have no place interfering with a prosecutor’s discretion regarding . . .
8 whether to engage in plea negotiations.” See *United States v. Banuelos-Rodriguez*, 215 F.3d 969,
9 976 (9th Cir. 2000). In *Banuelos-Rodriguez*, the 9th Circuit determined that the prosecutorial
10 action at issue was not “based on impermissible factors.” See *id.*, 977. In another case,
11 “[s]eparation of powers concerns” prevented the 9th Circuit from reviewing a prosecutor’s
12 charging decision (subject to prosecutorial discretion) “absent . . . showing that it rested on an
13 impermissible basis.” See *United States v. Redondo-Lemos*, 955 F.2d 1296, 1299 (9th Cir. 1992).
14 These cases highlight that, without “exceptionally clear proof” that prosecutorial discretion has
15 been abused, judicial interference with this discretion violates Separation of Powers. See *Nunes v.*
16 *Ramirez-Palmer*, 485 F.2d at 442.

18 The prosecutor’s role in the CNMI Drug Court Program, and elsewhere, is an important
19 one. The DCP P&P vest legal eligibility determinations with the OAG. See NMI J. DRUG CT. P.
20 & P. § 3(c) adopted effective February 14, 2023. Granting Defendant’s Motion would unduly
21 interfere with the prescribed role of the prosecutor, violating constitutional principles, case law,
22 and the procedures described in the DCP P&P. It would open the door for an inundation of
23 challenges to, and usurpations of, well-established prosecutorial discretion. The Court will not
24 open this door simply because the OAG exercised its authority to determine legal eligibility on a
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1 case-by-case basis when a Defendant is not compulsorily ineligible for Drug Court. *See*
2 *Malabanan*, Crim. No. 22-0038 at 2.

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V. CONCLUSION

Based on the foregoing, the Court **DENIES** Defendant's Motion for Court to Find Defendant Legally Eligible for Drug Court.

SO ORDERED on this **22nd** day of July, 2024.



TERESA K. KIM-TENORIO
Associate Judge