

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BACKGROUND

Based on events that occurred on or about August 30, 2025, the Defendant was charged with AGGRAVATED ASSAULT (As a 3rd Degree Felony) with a *Notice: Felony on Felony Release*. See Indictment (Oct. 6, 2025).

At the Pre-Trial Conference, the Defendant informed the court that the Defendant's other criminal matter was being dismissed by the People, which rendered any scheduling conflicts for a trial in this case moot. See Pre-Trial Conference Mins. at 9:20:56AM (Nov. 19, 2025).¹ However, the People subsequently made an oral Motion to Dismiss without Prejudice ("Motion to Dismiss"). *Id.* Although the Defendant had no objection to this case's dismissal, she requested that any dismissal of this case be *with* prejudice based on the People's representation of its intent to reindict. See Pre-Trial Conference Mins. at 9:20:56AM (Nov. 19, 2025). Upon granting this case's dismissal, the court took the issue of dismissal with or without prejudice under advisement. *Id.*

That same day, the Defendant filed a written Opposition to the Motion to Dismiss, which was amended later in the day. See Def.'s Opp'n (Nov. 19, 2025); see also Def.'s Amended Opp'n (Nov. 19, 2025). On November 20, 2025, the Defendant also filed a Further Statement in Opposition to Dismissal without Prejudice ("Further Statement").

DISCUSSION

Although the People cited no authority in support of its oral Motion to Dismiss, the Defendant referenced dismissal under 8 GCA § 80.70, which states the following:

The prosecuting attorney may with leave of court file a dismissal of an indictment, information or complaint and the prosecution shall thereupon terminate. Such a dismissal may not be filed during the trial without the consent of the defendant. The prosecuting attorney shall file a statement of his reasons for seeking dismissal when

¹ The Defendant's other matter is Criminal Case No. CF0686-25 before the Honorable Vernon P. Perez.

1 he applies for leave to file a dismissal and where leave is granted the court's order
2 shall set forth the reasons for granting such leave.

3 8 GCA § 80.70(a). "The principal object of the 'leave of court' requirement is apparently to
4 protect a defendant against prosecutorial harassment, e.g., charging, dismissing, and recharging,
5 when the Government moves to dismiss an indictment over the defendant's objection." *People v.*
6 *Gutierrez*, 2005 Guam 19 ¶ 49 (quoting *Rinaldi v. United States*, 434 U.S. 22, 29 n. 15 (1977)).
7 As it was an oral motion, the court notes that the People made no application for leave of court in
8 accordance with 8 GCA § 80.70(a), which made dismissal under this authority inappropriate.
9

10 Because both CF0683-25 and CF0686-25 involved the same alleged victim, the People
11 orally moved to dismiss this case, stating that the assigned prosecutor found that it was in the
12 interests of justice and judicial economy to reindict the offenses charged in CF0686-25 and the
13 instant case. *See* Pre-Trial Conference Mins. at 9:20:56AM (Nov. 19, 2025). The Defendant
14 argued that this basis for dismissal indicates a lack of good faith by the People. *See* Def.'s
15 Amended Opp'n at 4–6.
16

17 "The prosecutor's good or bad faith in bringing the motion is the determining factor in
18 granting or denying the motion." *Gutierrez*, 2005 Guam 19 ¶ 51. Specifically, the issue is
19 "whether the Government's later efforts to terminate the prosecution were similarly tainted with
20 impropriety." *Id.* (quoting *Rinaldi*, 434 U.S. at 30, 98 S. Ct. at 85). While there is a "presumption
21 that [the prosecutor] is acting in good faith and in the proper discharge of his duties . . . ' it can
22 be rebutted if a lack of good faith is shown." *Id.* ¶ 51–53 (quoting *United States v. Greater Blouse,*
23 *Skirt & Neckwear Contractors Ass'n*, 228 F.Supp. 483, 486 (S.D.N.Y. 1964); *see also United*
24 *States v. Salinas*, 693 F.2d 348, 352 (5th Cir. 1982)). "Once bad faith in bringing the motion is
25 found, the court may conclude that the prosecutor's actions would result in harassment, thereby
26 warranting the denial of the government's motion to dismiss." *Id.* ¶ 54 (citing *Salinas*, 693 F.2d
27
28

1 at 351). The Supreme Court in *Gutierrez* also referenced examples of prosecutorial harassment,
2 including recharging offenses when the Government moves to dismiss an indictment over the
3 defendant's objection." *Id.* ¶ 49.

4 The Defendant also argued that prejudice against her would continue if the court did not
5 dismiss this case with prejudice. *See* Def.'s Amended Opp'n at 8. Namely, she indicates that her
6 prejudice would continue based on her assertion of speedy trial at the time the court dismissed
7 the case. *Id.* Additionally, the Defendant noted a "lack of 'trial prosecutors'" for this case, which
8 is what led to the assigned prosecutor's intent to reindict this matter. *Id.*

9
10 Upon the court's review of the record, the People made no reference to a lack in trial
11 prosecutors as a basis for this case's dismissal. As stated above, however, the assigned prosecutor
12 intended to reindict the offenses charged in CF0686-25 and the instant case, because both matters
13 involved the same alleged victim. *See* Pre-Trial Conference Mins. at 9:20:56AM (Nov. 19, 2025).
14 The court notes that the People have been aware that both matters involved the same alleged
15 victim since charging the Defendant in both CF0683-25 and CF0686-25 on the same day.
16 However, it only became an issue at the Pre-Trial Conference; the last time the parties were
17 scheduled appear in court before commencing jury selection and trial.
18

19
20 After considering the circumstances leading up to this case's dismissal, the People's basis
21 for moving to dismiss, and the Defendant's arguments, the court finds that dismissal with
22 prejudice is appropriate in this case.

23
24 \\
25 \\
26 \\
27 \\
28

CONCLUSION

1
2 For reasons stated above, the court hereby **GRANTS IN PART AND DENIES IN PART**
3 the People's Oral Motion to Dismiss without Prejudice. Namely, the court denies dismissal of this
4 case *without* prejudice and hereby orders the above-captioned case **DISMISSED WITH**
5 **PREJUDICE.**
6

7
8
9 **SO ORDERED** this MAR 03 2026.

10
11 

12
13
14 **HONORABLE ALBERTO E. TOLENTINO**
15 Judge, Superior Court of Guam

16
17
18
19
20
21 **SERVICE VIA E-MAIL**

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

A.G. H. Rodriguez

22
23
24 Date: 3/3/26 Time: 3:13pm

Antonio J. Carr
25 Deputy Clerk, Superior Court of Guam
26
27
28