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SUPERIOR COURT
OF GUAM *cp*

IN THE SUPERIOR COURT OF GUAM

PEOPLE OF GUAM,	)	CRIMINAL CASE NO. CM0385-11
	)	GPD REPORT NO. 10-11363
	)	
vs.	)	
	)	
	)	DECISION AND ORDER
JOHN FRANCIS PREVITERA JR.,	)	RE. DEFENDANT'S MOTION TO
DOB: 10/12/1968	)	WITHDRAW WARRANT OF ARREST
	)	
Defendant.	)	

INTRODUCTION

This matter came before the Honorable Maria T. Cenzone upon Defendant John Francis Previtera Jr.'s ("Defendant") Motion to Withdraw Warrant of Arrest (the "Motion"). Representing the Defendant is Attorney Michael J. Berman ("Attorney Berman"). The People of Guam ("the People") did not file a response to the Motion. The Court took the Motion under advisement pursuant to CVR 7.1(e)(6)(E) and CR 1.1(g)(4)(B) of the LOCAL RULES OF THE SUPERIOR COURT OF GUAM on October 17, 2025.

After reviewing the Defendant's Motion and the relevant filings, and the applicable statutes and case law, the Court now issues its Decision and Order.

RELEVANT BACKGROUND

A. Procedural History

On March 28, 2011, the People filed a Complaint against Defendant charging him with: Driving While Under the Influence of Alcohol (As a Misdemeanor); Leaving the Scene of An

1 Accident with Property Damage (As a Petty Misdemeanor); and, Reckless Driving with Property
2 Damage (As a Petty Misdemeanor). *See Compl.* (Mar. 28, 2011). The Declaration of Probable
3 Cause indicates that on April 16, 2010, Defendant was subjected to a traffic stop after he was
4 observed driving in a reckless manner, losing control of his vehicle and running off the roadway,
5 striking a Government of Guam posted road junction sign, and then *fleeing* the scene. *Declaration*
6 (Mar. 28, 2011). Officers noted Defendant had “bloodshot watery eyes, odor of alcoholic
7 beverage on breath or person, slurred speech and inability to maintain balance.” *Id.* Defendant
8 then submitted to a field sobriety test which was discontinued “due to his inability to maintain
9 balance.” *Id.* Rather than arrest him, he was released from police custody and issued a Citation
10 and Notice to Appear on April 6, 2011, at 9:00 AM. *See Citation and Ntc. to Appear* executed on
11 April 16, 2010 (Mar. 28, 2011).¹ Defendant executed the Promise to Appear contained in the
12 Citation. *Id.*

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15 The arraignment was held on April 6, 2011, and the Defendant failed to appear. *See Min.*
16 *Entry* (Apr. 6, 2011). On April 7, 2011, then-Magistrate Judge Alberto E. Tolentino issued a
17 recommendation for a bench warrant to be issued against the Defendant for failing to appear for
18 the arraignment. *See Decl. and Recomm. Of Magis. Crt.* (Apr. 7, 2011). Subsequently, a bench
19 warrant was issued by the Presiding Judge Alberto C. Lamorena, III for the Defendant on April
20 11, 2011. *See Bench Warrant* (Apr. 11, 2011).

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22 Following the issuance of the Bench Warrant, over thirteen (13) years later on October
23 23, 2024, a Deferred Plea Agreement was received for this matter. *See Deferred Plea Agreement*
24 (Oct. 23, 2024). Attorney Berman entered his entry of appearance as defense counsel for
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¹ Defendant signed the Citation and Notice to Appear; Written Promise to Appear on April 16, 2010; however, it was
filed in the Superior Court of Guam with the Magistrate’s Complaint on March 28, 2011.

1 Defendant on June 25, 2025. *See Entry of Appearance* (Jun. 25, 2025). This Court was
2 subsequently assigned this matter on June 26, 2025, as the original assigned judge had long
3 retired. *See Ntc. of Judge Assignment* (Jun. 26, 2025).

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5 On July 8, 2025, Defendant requested a hearing before this Court regarding the filed
6 Deferred Plea Agreement. *See Def't. 's Request for Hearing* (Jul. 8, 2025). The Court denied the
7 request and further ordered that the Defendant self-surrender to any law enforcement for the return
8 of the warrant. *Id.*

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10 The Defendant filed the instant Motion on July 14, 2025. The People did not file a
11 response to the Motion; however, Defendant avers that the People do not oppose the Motion.
12 *Def's Mot.* at ¶ 7.

13 **B. Defendant moves this Court to withdraw the Warrant.**

14 Defendant now moves this Court to withdraw the Bench Warrant issued on April 11, 2011.
15 In support of his Motion, the Defendant submits the following: First, the Defendant is a resident
16 of Southern, Oregon, and lives with his wife Diana Gutierrez-Cruz. *See Def't. 's Mot.* at 1.
17 Defendant submits his biography and military history detailing his multiple deployments and
18 commendations during his thirty (30) years of service, including his 100% disability. *Id.* at 2 &
19 *Exh. B.* Second, the Defendant and the People have entered into a Deferred Plea Agreement on
20 October 22, 2024, and the People do not object to the withdrawal of the Bench Warrant. *Id.*
21 Finally, the Defendant lives off-island and is 100% disabled, and his travel to Guam would be too
22 expensive for a return of warrant hearing. *Id.* Defendant requests for the withdrawal of the warrant
23 so that he may proceed with the deferred plea in this matter. *Id.*

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If a person who signs a written promise to appear fails to appear as promised, the court may issue a warrant for his arrest. 8 GCA § 25.40. A person who *willfully* violates his written promise to appear in court is guilty of a felony, if the original charge against him was a felony, and guilty of a misdemeanor, if he was released in connection with a charge of any offense not a felony. 8 GCA § 25.50.

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1 accordance with Title 8, Guam Code Annotated, section 25.50.” *Citation and Notice to Appear*
2 (March 28, 2011). However, the Defendant failed to appear as promised on April 6, 2011, for an
3 Arraignment. *Arraignment Hrg.* (Apr. 6, 2011).
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5 On April 7, 2011, the Magistrate Judge recommended a Bench Warrant for the Defendant
6 for his failure to appear for the arraignment. *Decl. and Recommendation of Magistrate Court*
7 (Apr. 7, 2011). A Bench Warrant was issued on April 11, 2011, by Presiding Judge Lamorena.
8 *Bench Warrant* (Apr. 11, 2011). The Bench Warrant was not returned, cancelled or otherwise
9 returned unexecuted under 8 GCA § 15.80, and remains outstanding.
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11 The People have not responded to Defendant’s Motion to Withdraw (Vacate) the Warrant;
12 however, Defendant offers that “The Attorney General’s Office does not object to the withdrawal
13 or revoking the arrest warrant, based on all the circumstances.” *Def’s Mot.* at ¶ 7. Despite the
14 Defendant’s request, he has not provided any valid reason for his failure to appear at his
15 arraignment in 2011, but simply requests that the warrant be vacated because of his residence off-
16 island in Oregon, his disability, his military service, and finally, because “it is too expensive to
17 travel to Guam for the return of a warrant hearing.”
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19 The Court finds that the Defendant’s failure to comply with a court order, including any
20 summons or notice to appear, notwithstanding the Defendant’s relocation off-island or any
21 medical disability or prior military service, at a minimum, subjects him to a finding of contempt
22 under 7 GCA § 34101(5) for the disobedience of any lawful order or process of the court, in
23 addition to the issuance of a warrant to compel his attendance by his arrest. Moreover, 8 GCA §
24 25.50 subjects him to a *misdemeanor* offense if this court finds that the violation of his written
25 promise to appear was willful. “Willfulness” in this context “means a deliberate or intended
26 violation, as distinguished from an accidental, inadvertent, or negligent violation of an order.”
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1 *People of Guam v. Torres*, 2008 Guam 26, ¶ 54 (citing *United States v. Baldwin*, 770 F.2d 1550,
2 1558 (11th Cir.1985)).

3 While the Court acknowledges that over a decade has passed since the bench warrant was
4 issued in this case, the nature of the offenses alleged to have been committed by the Defendant
5 are offenses committed against the community and which resulted in the destruction of public
6 property. Moreover, the Deferred Plea Agreement submitted to the Court for its review and
7 acceptance indicates that the Defendant intends to plead guilty to Leaving the Scene of an
8 Accident with Property Damage (as a Petty Misdemeanor), subjecting him to 2 days of
9 incarceration time, for which he has *no pre-trial credit*, because he was not held in the custody of
10 the Department of Corrections after his arrest by the Guam Police Department. Additionally, no
11 restitution for the damage is provided for in the Plea, and his term of probation is a mere one (1)
12 month.
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15 Importantly, the Defendant's arguments that the warrant should be vacated because of
16 "good cause," which is the "geographical distance between the Defendant and this Court" – due
17 to an act solely committed by the Defendant (i.e., leaving Guam) and not attributable to this Court
18 – and the high cost of travel to Guam to answer to the warrant are dismissive of the gravity and
19 seriousness of both the charges against the Defendant and his actions which resulted in the
20 Presiding Judge issuing the bench warrant. What Defendant's Motion also ignores is that the
21 Defendant failed to appear at a hearing, which he promised to attend *in order to be released from*
22 *GPD's custody*, and for which his non-appearance subjects him to a misdemeanor charge under
23 8 GCA § 25.50. Moreover, the Defendant's complete disregard of the authority of the Court to
24 compel his attendance by a warrant for his arrest and seemingly flippant attitude towards his
25 failure to appear and answer to the charges against him for over thirteen (13) years would
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1 otherwise compel the Court to deny the Motion – if not for the People’s apparent desire not to
2 prosecute the violation and to resolve this case without trial.

3 As set forth in Defendant’s Motion, the People have indicated – at least to the Defendant’s
4 Counsel, if not directly to the Court – that it does not oppose Defendant’s Motion to Withdraw
5 the Warrant. Thus, the Court shall interpret this representation, and the submitted Deferred Plea,
6 to mean that the People do not find Defendant’s failure to appear at the Arraignment in 2011 was
7 willful under 8 GCA § 25.50, which requires a finding of “willfulness.” Finally, despite the
8 Defendant’s failure to provide *any* reasonable basis for his failure to appear at his arraignment on
9 April 6, 2011, the Court shall not find this violation willful and hereby GRANTS Defendant’s
10 Motion, subject to on ORDER compelling his appearance before this Court at all further criminal
11 trial proceeding by Zoom, or other remote access, as provided by the Court.²

12 CONCLUSION AND ORDERS

13 For the above reasons, the Defendant’s Motion to Withdraw Warrant of Arrest is
14 **GRANTED**. The Warrant is hereby **VACATED**.

15 However, Defendant is **ORDERED** to appear for all scheduled proceedings in this matter
16 before this Court via Zoom;

17 **IT IS FURTHER ORDERED** that Defendant shall check in to probation by email
18 immediately upon service of this Decision and Order and each month thereafter, or as ordered by
19 the Court;

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26 ² The Court stresses that the decision to vacate the bench warrant in this case is based on the People’s failure to file
27 a response to the Motion and the submission of the Deferred Plea for the Court’s consideration, indicating its intent
28 not to prosecute Defendant. What is concerning to the Court is that the Defendant failed to submit any reason
explaining why he was absent from the Arraignment on April 6, 2011. Was he on orders and unable to appear? Did
he misplace the citation and was unsure how to find out when he was supposed to appear? Did he simply forget? All
of these would explain that his absence was not willful. Instead, he elected to submit – thirteen years later – that he
lives too far away and that it is too costly to fly to Guam to ask the Court to vacate the warrant that the Court had
every authority under several laws to issue. The Court finds these excuses unpalatable despite its decision herein.

1 **IT IS FURTHER ORDERED** that Defendant's Counsel shall provide Defendant with
2 the e-mail address for Probation Services Division so that he may comply with all email check-
3 in requirements.
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5 **IT IS FURTHER ORDERED** that Defendant's failure to appear before this Court or to
6 check-in to Probation by e-mail, may result in sanctions, including the issuance of a bench warrant
7 for violation of a court order.

8 A **CHANGE OF PLEA HEARING** shall be scheduled as a remote proceeding and
9 Defendant shall appear via Zoom. Notice of the Change of Plea hearing time and date and Zoom
10 link and access shall be issued under separate cover.
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12 **SO ORDERED** this 15th day of January, 2026.

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15 **HONORABLE MARIA T. CENZON**
16 Judge, Superior Court of Guam
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