

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	
Plaintiff,	)	CRIMINAL NO. ST-12-CR-232
	)	
vs.	)	14 V.I.C. § 299(2)
	)	16 V.I.C. § 91(b)(1)(2)
	)	
ADAM G. FORRESTER,	)	
(D.O.B.: 07-20-79),	)	
	)	
Defendant.	)	
_____	)	

MEMORANDUM OPINION AND ORDER

BEFORE THE COURT is the Defendant's Motion to Reconsider Order of Release, filed on July 19, 2012. By Order dated July 9, 2012, the Court, as the "Committing Officer", released the Defendant into the Pretrial Intervention Program ("PIP") pursuant to 5 V.I.C. § 4611 *et seq.* Whereas the program the Court released the Defendant into contained different terms than those he originally agreed to, the Defendant moves the Court to reconsider its Order of Release.

On June 1, 2012 the People of the Virgin Islands (the "People") and the Defendant entered into a written agreement to recommend that the Defendant be released into PIP. They also agreed on the terms of a preliminary plan designed "to assure that [the Defendant] will lead a lawful life style."¹ The plan included ten (10) hours of community service. The Court did not accept the ten (10) hours of community service element of the plan but instead released the Defendant into PIP with the condition that he complete sixty (60) hours of community service.

The Defendant's Motion asks the Court to reconsider its decision because rejection of the preliminary plan agreed to between the Defendant and the People constitutes "plain error". Specifically, relying on § 4614, the Defendant contends that "the Director [of PIP], in conjunction with the prosecutor has the authority to devise the plan" The Defendant

¹ V.I. CODE ANN. tit. 5, § 4613(3) (1997).

misreads § 4614. That section does not provide or mandate that “the prosecutor” be involved in devising the plan. It states that “[t]he [D]irector . . . shall . . . interview [the Defendant] . . . and . . . shall assist such person in preparing a *preliminary* plan for his release to [PIP].”² The fact that the People may, pursuant to § 4613(1), effectively prevent an otherwise “eligible individual” from participating in PIP does not give the prosecutor the authority to determine the elements of the preliminary plan mandated in § 4614.³ Therefore, contrary to the Defendant’s assertion, the People do not necessarily have a role in proposing a plan. More importantly, the plan developed through the joint efforts of the Defendant and the Director is merely preliminary and the Court is not obligated to adopt it as the final plan.

The Court has the sole power to “release any eligible individual to a program of community supervision and services”⁴ By definition, the details of the individualized “program”⁵ are defined by its “plan”.⁶ And, the specific program into which a defendant is released must, in accordance with § 4615, be one that he has voluntarily agreed to.⁷ As the Defendant has made clear, he never agreed to the program and plan, requiring sixty (60) hours of community service, prior to the Court ordering his release. Therefore, the Court wrongfully ordered the Defendant’s release on July 9, 2012.

While the Court did not have the authority to release the Defendant into a PIP program calling for a plan to which the Defendant had not agreed, the Court clearly has authority to

² § 4614 (emphasis added).

³ The holding in *Gov’t v. Kramer*, 22 V.I. 317, 636 F. Supp. 458 (D.V.I. App. Div. 1986), that 5 V.I.C. 4613 is constitutional and that the prosecutor did not abuse his discretion in denying the defendant permission to enter the pretrial intervention program, cannot be read to expand the prosecutor’s discretion to determining the elements of an individual’s preliminary PIP plan as mandated in § 4614.

⁴ § 4615.

⁵ § 4613(2).

⁶ § 4613(3).

⁷ § 4615.

deny release to the proposed program.⁸ Specifically, the Court finds that the proposed/preliminary plan does not "include[] those elements . . . which an individual needs to assure that he will lead a lawful life style[.]"⁹

Accordingly, it is hereby

ORDERED that the Defendant's Motion to Reconsider Order of Release is **GRANTED**; and it is further

ORDERED that the July 9, 2012 Order of Release into Pretrial Intervention Program is **VACATED**; and it is further

ORDERED that the Application to Enter Pretrial Intervention Program is **DENIED**; and it is further

ORDERED that trial in this matter is **SCHEDULED** for **Thursday, August 30, 2012 at 3:00 p.m.** in Courtroom 3 of the Superior Court Magistrate Division, Barbel Plaza South, St. Thomas, U.S. Virgin Islands; and it is further

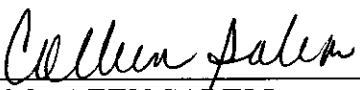
ORDERED that a copy of this Order shall be served on the Defendant, Adam G. Forrester, and copies thereof directed to the following: Sabrina J. Cohen, Esq., Assistant Attorney General; Alex M. Moskowitz, Esq., and Lauris V. Quester, PIP Coordinator.

DATED: July 27, 2012



ALAN D. SMITH
Magistrate of the Superior Court
of the Virgin Islands

ATTEST:
VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

BY: 

COLLEEN SALEM
Court Clerk Supervisor 7/30/2012

⁸ "The committing officer *may* release any individual to a program of community supervision and services" § 4615 (emphasis added).

⁹ § 4613(3).