

FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

CONCURRING OPINION OF FUJISE, J.

I concur in the result of the plurality opinion, affirming the conviction of Lloyd Pratt (Pratt) for three violations of Hawai'i Administrative Rules § 13-146-4, requiring compliance with officially posted signs governing the "extent and scope of closure" and "visiting hours" pertaining, in this case, to Kalalau State Park. Contrary to Pratt's argument on appeal that the district court erred in adding a "fourth prong" to his claim of constitutionally privileged conduct under State v. Hanapi, 89 Hawai'i 177, 970 P.2d 485 (1998), I agree, for the reasons stated in the plurality opinion, that proof of the three prongs identified in Hanapi was only the minimum showing Pratt was required to make. Consequently, it was not error for the district court to require a showing that Pratt's exercise of this privilege was reasonable under the circumstances of this case, and to conclude that he failed to make such a showing.¹

However, I write separately because, in my view, as the State has not cross-appealed from the district court's ruling that Pratt satisfied the three Hanapi prongs and that the district court was correct in considering the State's right to regulate the exercise of customary and traditional native Hawaiian rights, our determination that the district court did not err in ruling that the balance of interests weighed in favor of the State is dispositive. Application of Hawaiian Elec. Co., Inc., 56 Haw. 260, 267, 535 P.2d 1102, 1107 (1975) (declining to decide an issue not briefed by the parties where alternative basis was dispositive).



¹ I also agree with the plurality opinion that Pratt's remaining points on appeal are without merit.