

State v. Tayshea Aiwohi

Before imposing sentence, this court has several comments it is constrained to make.

1. The plea agreement and pending appeal.

Both the State and the Defendant have agreed that Defendant will receive a sentence of probation for a period of ten years with the standard terms and conditions of probation and no additional jail. The defense has reserved the right to appeal this court's earlier ruling of June 3, 2004 with the State's consent. After careful consideration this court bound itself to that agreement under Rule 11 of the Hawaii Rules of Penal Procedure for the following reasons.

First and foremost, accountability: The Defendant has taken responsibility for the untimely and tragic death of her child after having participated in and completed rigorous and demanding drug treatment and parenting education. She has done every thing expected of her since the death of her child, Treyson Kaimana, in July 2001, as well she should. She is being held accountable for her conduct, assuming she complies strictly with the terms and conditions of probation for the next ten years. Otherwise, she could receive a twenty year prison term. She knows that and is on clear notice.

Second: The Defendant has many family and personal responsibilities including raising her five children. According to the probation report, she comes from a hardworking, intact and supportive family. She has all the skills necessary to be a safe parent to her remaining children. While only time will tell, we all wish her well.

Third. The conditional plea will permit the defense to appeal this court's earlier ruling allowing the prosecution. In this court's view the attorneys have conducted themselves quite professionally, indeed impeccably, during what could have become an overly emotional and antagonistic litigation. The Honolulu Police Department, the Office of the Medical Examiner, and the Department of the Prosecuting Attorney, including deputy prosecutor Glen Kim, carefully investigated, conferred, charged and litigated this case. The defense attorney, Todd Eddins, likewise carefully researched and identified the key constitutional issues and sought to have the charge dismissed. After careful consideration and acknowledging this is a case of first impression in Hawai'i and one of the first elsewhere, this court allowed the prosecution to go forward. This is one of the very few homicide cases I can remember where no additional jail or prison time is given.

2. Clear notice of future prosecutions.

At this point, unless the appellate courts rule otherwise, every person in the State of Hawaii should be on clear notice that the use of crystal methamphetamine while pregnant can result in death or serious injury to children born alive. This notice should include family, friends and community. In this court's view drug usage, including the use of crystal methamphetamine is a matter of choice and not an illness. Certainly it is a conscious choice to obtain and use the drug initially and worse yet, while pregnant. I really want to emphasize that. Why anyone would use the drug knowing they are carrying a child is baffling to most people.

If drug usage were an illness from the get go, we would today be in medical center with a physician present in a diagnosis, treatment mode. Instead we are in felony court on the record with a judge

and attorneys present. In this regard the State, with good reason, has served clear notice that such conduct can and will result in serious felony charges brought where the child is born alive and later dies or suffers injury due to knowing, intentional or reckless drug use.

3. Crystal methamphetamine and this community.

This court is constrained to observe that the scourge (indeed the ravages) of “ice” or crystal methamphetamine brings its aftermath to our courts daily. The judiciary has responded admirably with a variety of approaches including specialty courts such as adult drug court, juvenile drug court (juvenile offenders), family drug court (child abuse and neglect cases). The criminal and family court judges tell me they see “ice” daily on their busy calendars. Yet, “ice” is more than a criminal law, family law and judicial issue as we all know. Prevention, early intervention, treatment and more are sorely needed. This court commends community education and would suggest every one in Hawai`i discuss this around the dinner table and in their work places and schools. A group of judges have collaborated in preparing a short document entitled 10 suggestions to keep your child off drugs and out of court. It is on the PBS Hawaii website. I commend it for public discussion, critique and more. My law clerk, Nathan Roehrig, has extra copies available.

These remarks, the earlier decision by this court denying the motion, and the PBS Hawaii document will be posted on the Judiciary’s website.