

**Electronically Filed
Intermediate Court of Appeals
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NO. 30220

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
LAWRENCE K. ROGERS, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
(CASE NO. 2DTA-08-00807)

SUMMARY DISPOSITION ORDER

(By: Nakamura, Chief Judge, Leonard and Reifurth, JJ.)

Defendant-Appellant Lawrence Kenneth Rogers (**Rogers**) appeals the November 12, 2009 order entered in the District Court of the Second Circuit, Wailuku Division (**District Court**) that: (1) granted the State's request to reconsider the District Court's September 14, 2009 order arresting an August 13, 2009 judgment of conviction against Rogers and (2) reinstated the judgment of conviction (**Reconsideration Order**).^{1/}

On August 13, 2009, a Notice of Entry of Judgment and/or Order and Plea/Judgment was entered convicting Rogers of Operating a Vehicle Under the Influence of an Intoxicant (**OVUII**), in violation of Hawaii Revised Statutes (**HRS**) § 291E-61(a) (Supp. 2007). On September 10, 2009, upon Roger's timely motion, pursuant to Hawai'i Rules of Penal Procedure (**HRPP**) Rule 34, the District Court entered an Order Granting Motion to Arrest

^{1/} The Honorable Kelsey T. Kawano presided.

Judgment, filed August 24, 2009. On November 12, 2009, upon the State's timely motion, the District Court entered the Reconsideration Order. Rogers timely appealed.

On appeal, Rogers raises a single point of error, *i.e.*, that the District Court erred in granting the State's motion of reconsideration because the complaint failed to allege that Rogers was driving his vehicle upon a public way, street, road, or highway at the time of the offense, which rendered the charge deficient pursuant to State v. Wheeler, 121 Hawai'i 383, 393, 219 P.3d 1170, 1180 (2009).^{2/}

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Rogers's points of error as follows:

The District Court's November 12, 2009 Reconsideration Order is vacated, and this case is remanded to the District Court for dismissal of the OVUII charge without prejudice.

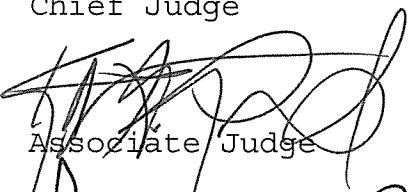
DATED: Honolulu, Hawai'i, March 14, 2011.

On the briefs:

Hayden Aluli
for Defendant-Appellant

Renee Ishikawa Delizo
Deputy Prosecuting Attorney
For Plaintiff-Appellee


Chief Judge


Associate Judge


Associate Judge

^{2/} The State failed to address the substance of the sole point of error on appeal. Instead, the State argues that the Reconsideration Order should be remanded because of a mistyped date. Irrespective of clerical errors, it is the intent and substance of the document that controls. See State v. Poohina, 97 Hawai'i 505, 509-10, 40 P.3d 907, 911-12 (2002). The intent of the Reconsideration Order is clear. The clerical error in the Reconsideration Order is not material. The State cites no legal authority for its request to file a supplemental brief "if the instant case is allowed to proceed" and we find none.