

NO. CAAP-14-0000761

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellant,  
v.  
WAILANA K. CRIVELLO HO, Defendant-Appellee

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
HONOLULU DIVISION  
(CASE NO. 1DTA-13-04236)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, Reifurth and Ginoza, JJ.)

Plaintiff-Appellant State of Hawaii (State) appeals from the Notice of Entry of Judgment and/or Order and Plea/Judgment, filed on March 12, 2014, in the District Court of the First Circuit, Honolulu Division (District Court).<sup>1</sup>

The charge against Defendant-Appellee Wailana K. Crivello Ho (Ho) for Operating a Vehicle Under the Influence of an Intoxicant (OVUII), in violation of Hawaii Revised Statutes (HRS) § 291E-61(a)(1) and/or (a)(3) (Supp. 2014) was dismissed with prejudice by the District Court.

On appeal, the State claims the District Court erred by dismissing the charge because it had no valid legal basis to do so.

Upon careful review of the record and the opening brief submitted by the State, there being no answering brief filed by Ho, and having given due consideration to the arguments advanced

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<sup>1</sup> The Honorable David W. Lo presided.

and the issues raised, we resolve the State's point of error as follows:

The District Court abused its discretion by dismissing the charge against Ho because it lacked a legal basis for doing so. None of the three grounds which the District Court apparently relied upon to dismiss the charge (i.e., the reasons stated by defense counsel) provide a valid basis to dismiss the charge against Ho.

A court's inherent power to dismiss a criminal case arises from article VI, section 1 of the Hawai'i Constitution which "grants courts the power to take steps necessary for the promotion of justice[.]" State v. Mageo, 78 Hawai'i 33, 37, 889 P.2d 1092, 1096 (App. 1995) (internal quotation marks omitted) (citing State v. Moriwake, 65 Haw. 47, 647 P.2d 705 (1982)). We reviewed the District Court's pre-trial dismissal of the charge for abuse of discretion. State v. Moriwake, 65 Hawai'i 47, 55, 647 P.2d 705, 711 (1982). The District Court must balance "the interest of the state against fundamental fairness to a defendant with the added ingredient of the orderly functioning of the court system." Mageo, 78 Hawai'i at 37, 889 P.2d at 1096 (citation and internal quotation marks omitted). The Hawai'i Supreme Court has noted that situations such as a serious threat to the integrity of the judicial process, clear denial of due process, evidence some constitutional right has been violated, arbitrary action, or governmental misconduct have justified the use of such power by other courts. State v. Alvey, 67 Haw. 49, 57, 678 P.2d 5, 10 (1984). However, judicial economy is "not a legitimate reason to dismiss an indictment prior to a defendant's first trial[.]" and "[e]xcept where Moriwake-type considerations apply, dismissing an indictment just to ease a crowded docket is an abuse of discretion." Id. at 58, 678 P.2d at 11 (citation omitted).

In dismissing the charge against Ho, the District Court accepted Ho's argument that Hawai'i Rules of Penal Procedure (HRPP) Rule 48<sup>2</sup> had been violated, that Ho's driver's license was

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<sup>2</sup> HRPP Rule 48(b) provides that:

(continued...)

administratively revoked and an ignition interlock device placed on her vehicle, and that according to the District Court's practice, if the case had been previously transferred to another courtroom it would have been dismissed, instead of continued a second time at the State's request.

Ho's case was called by the presiding District Court judge on February 13, 2014,<sup>3</sup> who granted the State a second continuance over the objection of Ho's counsel, and trial was re-set for March 12, 2014. In re-setting the trial date, the presiding District Court judge stated that he wanted to set a trial date in order to comply with HRPP Rule 48, which expired on March 6, 2014. However, due to a scheduling conflict with Ho's counsel, Ho opted to have trial set for March 12, 2014 and waived her rights under HRPP Rule 48. When Ho then appeared for trial on March 12, 2014, the State was ready to proceed. There was no violation of HRPP Rule 48 on March 12, 2014.

The District Court did not order the revocation of Ho's driver's license and installation of an ignition interlock system on her vehicle. The Administrative Revocation Program, which allows for revocation of Ho's license and installation of an ignition interlock device is authorized pursuant to HRS §§ 291E-31 and 291E-44.5 (Supp. 2013). Any punishment as a

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<sup>2</sup>(...continued)

**(b) By Court.** Except in the case of traffic offenses that are not punishable by imprisonment, the court shall, on motion of the defendant, dismiss the charge, with or without prejudice in its discretion, if trial is not commenced within six months:

(1) from the date of arrest if bail is set or from the filing of the charge, whichever is sooner, on any offense based on the same conduct or arising from the same criminal episode for which the arrest or charge was made; or

(2) from the date of re-arrest or re-filing of the charge, in cases where an initial charge was dismissed upon motion of the defendant; or

(3) from the date of mistrial, order granting a new trial or remand, in cases where such events require a new trial.

Clauses (b)(1) and (b)(2) shall not be applicable to any offense for which the arrest was made or the charge was filed prior to the effective date of the rule.

<sup>3</sup> The Honorable Russell S. Nagata presided on February 13, 2014.

result of an OVUII conviction is not "additional" to the "nonpunitive and purely remedial" consequences of the Administrative Revocation Program. State v. Toyomura, 80 Hawai'i 8, 23, 904 P.2d 893, 908 (1995). Therefore, Ho was not subject to multiple punishments. Id.

There was no evidence of a serious threat to the integrity of the judicial process, that a constitutional right had been violated, of arbitrary action, or of governmental misconduct in this case. Therefore, a dismissal of the charge by the District Court under these circumstances was an abuse of discretion.

Finally, the District Court's dismissal of the charge, in effect, overruled the ruling by the prior District Court judge who had continued the matter, without any cogent reason explained on the record. See State v. Oughterson, 99 Hawai'i 244, 254, 54 P.3d 415, 425 (2002) ("Unless cogent reasons support the second court's action, any modification of a prior ruling of another court of equal and concurrent jurisdiction will be deemed an abuse of discretion." (citation and emphasis omitted)).

Therefore, IT IS HEREBY ORDERED that the Notice of Entry of Judgment and/or Order and Plea/Judgment, filed on March 12, 2014, in the District Court of the First Circuit, Honolulu Division is vacated and the case is remanded for proceedings consistent with this order.

DATED: Honolulu, Hawai'i, August 28, 2015.

On the brief:

Loren J. Thomas,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for Plaintiff-Appellant.

Presiding Judge

Associate Judge

Associate Judge

BENCH MEMORANDUM

Plaintiff-Appellant State of Hawai'i (State) appeals from the Notice of Entry of Judgment and/or Order and Plea/Judgment, filed on March 12, 2014 in the District Court of the First Circuit, Honolulu Division (District Court).<sup>4</sup>

The charge against Defendant-Appellee Wailana K. Crivello Ho (Ho) for Operating a Vehicle Under the Influence of an Intoxicant (OVUII), in violation of Hawaii Revised Statutes (HRS) § 291E-61(a)(1) and/or (a)(3) (Supp. 2012) was dismissed with prejudice by the District Court. **[JDCROA doc. 21 at 1]**

On appeal, the State claims the District Court erred by dismissing the charge because it had no valid legal basis to do so. **[OB at 6]**

**I. BACKGROUND**

Ho was arrested on September 7, 2013 for OVUII. **[JDCROA doc. 3 at 1]** On October 1, 2013, Ho was charged by written Complaint with OVUII. **[JDCROA doc. 1 at 1-2]** The case was called on October 7, 2013 where Ho was given a written copy of the complaint. **[JDCROA doc. 4, court minutes]** On December 10, 2013, the case was called but the State's witness, Officer Wong, was sick so the case was continued over Ho's objection. **[JDCROA doc. 7, court minutes]**

On February 13, 2014 Ho appeared for trial. The State again stated that Officer Wong was sick and asked for a continuance. **[JTr doc. 12 at 2]** The State noted that the time for HRPP Rule 48 would run on March 6, 2014. **[JTr doc. 12 at 2]** The District Court granted the State's request for a continuance. **[JTr doc. 12 at 2]** However, Ho's defense counsel stated that he

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<sup>4</sup> The Honorable David W. Lo presided.

would not be available until March 11. **[JTr doc. 12 at 3]** The District Court stated that trial would be set for March 5 unless defense counsel requested a later date. **[JTr doc. 12 at 3]** The District Court also stated that if the time for HRPP Rule 48 ran sooner, it would have set the trial sooner. **[JTr doc. 12 at 5]** The District Court instructed counsel to discuss with Ho whether she would waive the time for HRPP Rule 48 or trial would be set for some time prior to March 6. **[JTr doc. 12 at 5]** After the case was recalled, defense counsel asked what the normal course was for continued DUI's in courtroom 10D to which the District Court responded two to four weeks. **[JTr doc. 12 at 6]** Defense counsel objected to having the case set for trial before the normal course but waived the time for HRPP Rule 48 purposes and trial was set for March 12. **[JTr doc. 12 at 6-7]**

On March 12, 2014 Ho again appeared for trial. The State stated that it was ready to proceed. **[JTr doc. 14 at 2]** However, defense counsel claimed that HRPP Rule 48 time ran out the prior day. **[JTr doc. 14 at 2]** Counsel also noted that Ho had to install an ignition interlock device on the vehicle twice and that her license was revoked until October 2014. **[JTr doc. 14 at 2]** Counsel stated that there should be consistency between treatment of all defendants and if the case was in courtroom 10D it would have been dismissed but it was continued in courtroom 10C instead. **[JTr doc. 14 at 3]** The State noted that 180 days ended that day, it was ready to proceed, and a prior judge gave the State a continuance. **[JTr doc. 14 at 3-4]** Defense counsel noted that it is the court policy to move DUI cases to courtroom 10D if a defendant has private counsel and that in courtroom 10D the case would have been dismissed. **[JTr doc. 14 at 4]** The

District Court ended the proceeding by stating "For all the reason stated by [defense counsel], the matter's dismissed with prejudice. Bail to be returned." [JTr doc. 14 at 4-5]

On March 12, 2014, a written the Notice of Entry of Judgment and/or Order and Plea/Judgment was entered which dismissed the charge with prejudice. [JDCROA doc. 21 at 1]

## **II. STANDARD OF REVIEW**

### **Abuse of Discretion - Criminal**

"Generally, to constitute an abuse, it must appear that the court clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant." State v. Crisostomo, 94 Hawai'i 282, 287, 12 P.3d 873, 878 (2000) (internal quotation marks, citations, and brackets omitted).

## **III. DISCUSSION**

The District Court abused its discretion by dismissing the charge against Ho because it lacked a legal basis for doing so. None of the three legal bases which the District Court relied upon to dismiss the charge provide a valid basis to dismiss the charge against Ho.

A court's inherent power to dismiss a criminal case arises from article VI, section 1 of the Hawai'i Constitution which "grants courts the power to take steps necessary for the promotion of justice[.]" State v. Mageo, 78 Hawai'i 33, 37, 889 P.2d 1092, 1096 (App. 1995) (internal quotation marks omitted) (citing State v. Moriwake, 65 Haw. 47, 647 P.2d 705 (1982)).

"[U]nder this aspect of the judicial power, trial courts have the

power to dismiss *sua sponte* an indictment with prejudice and over the objection of the prosecuting attorney[ ] [w]ithin the bounds of duly exercised discretion[.] The parameters within which this discretion is properly exercised requires a balancing [of] the interest of the state against fundamental fairness to a defendant with the added ingredient of the orderly functioning of the court system." Id. (citation and internal quotation marks omitted). A serious threat to the integrity of the judicial process, clear denial of due process, evidence some constitutional right has been violated, arbitrary action, or governmental misconduct justifies use of such power. State v. Alvey, 67 Haw. 49 at 57, 678 P.2d 5, 10 (1984). However, such supervisory power to dismiss a charge is not so broad as to allow dismissal prior to a first trial or "just to ease a crowded docket." Id. at 57, 678 P.2d at 10-11.

In dismissing the charge against Ho, the District Court accepted Ho's argument that HRPP Rule 48 had been violated, Ho's driver's license was administratively revoked and an ignition interlock device placed on her vehicle, and that according to the court's practice, if the case was transferred to another courtroom it would have been dismissed instead of continued a second time at the State's request.

Ho's case was heard by the presiding district court judge on February 13, 2014 which granted the State a continuance and trial was re-set for March 12, 2014. **[JTr doc. 12 at 6-7]** Ho does not claim that the presiding judge on February 13, 2014 could not have grant a continuance and re-set the trial date. In resetting the trial date, the presiding district court judge stated that it would set a trial date in order to comply with



HRPP Rule 48, which expired on March 6, 2014. [JTr doc. 12 at 5] Due to a scheduling conflict with Ho's counsel, Ho opted to have trial set for March 12, 2014 and waived her rights under HRPP Rule 48. [JTr doc. 12 at 6] When Ho appeared for trial on March 12, 2014, the State stated that it was ready to proceed. There was no violation of HRPP Rule 48 on March 12, 2014.

The District Court did not order the revocation of Ho's driver's license and installation of an ignition interlock system on her vehicle. The Administrative Revocation Program, which allows for revocation of Ho's license and installation of an ignition interlock device is authorized pursuant to HRS § 291E-31 and 291E-44.5. Any punishment as a result of an OVUII conviction is not in addition to the "nonpunitive and purely remedial" consequences of the Administrative Revocation Program. State v. Toyomura, 80 Hawai'i 8, 23, 904 P.2d 893, 908 (1995). Therefore, Ho was not subject to multiple possible punishments. Id.

There was no evidence of a serious threat to the integrity of the judicial process, that some constitutional right had been violated, arbitrary action, or governmental misconduct in this case. Therefore, a dismissal of the charge by the District Court under these circumstances was an abuse of discretion.

#### **IV. CONCLUSION**

The Notice of Entry of Judgment and/or Order and Plea/Judgment, filed on March 12, 2014 in the District Court of the First Circuit, Honolulu Division is vacated and the case is remanded for proceedings consistent with this disposition.