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NO. CAAP-14-0001150

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
v.
ANDREA FELIX, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(Honolulu Division)
(CASE NO. 1DCW-13-0003321)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Andrea Felix (Felix) was originally charged with harassment by stalking, but the complaint was subsequently amended to charge harassment. The District Court of the First Circuit (District Court)^{1/} dismissed the harassment charge for violation of the speedy trial time limits set forth in Hawaii Rules of Penal Procedure (HRPP) Rule 48(b) (2000), and it ordered that the dismissal be "without prejudice." Felix appeals from the "Order Granting [Felix's] Motion to Dismiss for Violation of HRPP Rule 48" (Order) that was filed by the District Court on September 8, 2014.

^{1/} The Honorable Clarence A. Pacarro presided over the proceedings relevant to this appeal.

On appeal, Felix contends that the District Court erred in dismissing the harassment charge without prejudice, instead of with prejudice. We apply State v. Hern, 133 Hawai'i 59, 323 P.3d 1241 (App. 2013), in deciding Felix's appeal.

In Hern, this court held that "in determining whether to dismiss a charge with or without prejudice under HRPP Rule 48(b), the trial court must not only consider the Estencion factors,^[2/] but must also clearly articulate the effect of the Estencion factors and any other factor it considered in rendering its decision." Hern, 133 Hawai'i at 64, 323 P.3d at 1246. Here, the District Court did not comply with these requirements, and we conclude that the record is not sufficient for this court to determine whether the District Court abused its discretion in dismissing the charge without prejudice.

Accordingly, we vacate the District Court's Order, and we remand the case with instructions that the District Court: (1) consider the Estencion factors in determining whether to dismiss Felix's harassment charge with or without prejudice; and (2) make findings that clearly articulate the effect of the Estencion factors and any other factor it considered in rendering its decision.

DATED: Honolulu, Hawai'i, September 25, 2015.

On the briefs:

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City and County of Honolulu
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Craig H. Nakamura
Chief Judge

[Signature]
Associate Judge

[Signature]
Associate Judge

^{2/} The "Estencion factors" are: "'[(1)] the seriousness of the offense; [(2)] the facts and the circumstances of the case which led to the dismissal; and [(3)] the impact of a reprosecution on the administration of [HRPP Rule 48] and on the administration of justice.'" State v. Hern, 133 Hawai'i 59, 60, 323 P.3d 1241, 1242 (App. 2013) (brackets in original) (quoting State v. Estencion, 63 Haw. 264, 269, 625 P.2d 1040, 1044 (1981)).