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NO. CAAP-13-0001580

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
v.
SHANE K. LIU, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
(CASE NO. 2P112-01314)

SUMMARY DISPOSITION ORDER

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

Plaintiff-Appellee State of Hawaii (State) charged Defendant-Appellant Shane K. Liu (Liu) with third-degree assault and harassment. Liu moved to dismiss the charges for violation of the speedy trial time limits set forth in Hawaii Rules of Penal Procedure (HRPP) Rule 48 (2000). The District Court of the Second Circuit (District Court)^{1/} ruled that the HRPP Rule 48 time limits had been violated, and it dismissed the charges against Liu without prejudice. The District Court filed its Judgment on May 22, 2013.

On appeal, Liu contends that the District Court erred in dismissing his charges without prejudice, instead of with prejudice, because: (1) it failed to consider the mandatory factors set forth in State v. Estencion, 63 Haw. 264, 625 P.2d 1040 (1981); and (2) the State failed to present any evidence at the hearing on his motion to dismiss, including any evidence showing that the delay in bringing the case to trial was

^{1/} The Honorable Jan K. Apo presided.

justified. Although the normal remedy for the first point of error is to remand the case to the District Court for consideration of the Estencion factors^{2/} and entry of appropriate findings, Liu contends that in light of his second point of error, this court should order that the case be dismissed with prejudice.

The State concedes error on both points of error. Notwithstanding the State's concession of error, the Hawai'i Supreme Court has held that "even when [the State] concedes error," the appellate courts have an independent obligation (1) to ascertain whether the State's concession of error is "supported by the record and well-founded in law" and (2) to determine that the error "is properly preserved and prejudicial." State v. Hoang, 93 Hawai'i 333, 336, 3 P.3d 499, 502 (2000) (internal quotation marks and citation omitted). We conclude that the State's concession of error on the first point is valid, but that its concession on the second point is not.

I.

We agree with the parties that the record supports the conclusion that the District Court erred in failing to adequately consider the mandatory Estencion factors. See Estencion, 63 Haw. at 269, 625 P.2d at 1044 (requiring the trial court to consider each of the Estencion factors). In State v. Hern, 133 Hawai'i 59, 323 P.3d 1241 (App. 2013), 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, 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 inadequate to

^{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 Estencion, 63 Haw. at 269, 625 P.2d at 1044).

permit meaningful review of the District Court's exercise of discretion in dismissing the case without prejudice. The normal remedy in this situation is to vacate the District Court's Judgment and to remand the case with instructions that the District Court: (1) consider the Estencion factors in determining whether to dismiss the charges 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.

Liu, however, contends that because the State failed to introduce any evidence at the hearing, including any evidence showing that the delay in bringing the case to trial was justified, we should reverse the District Court's Judgment and dismiss the case with prejudice. We disagree.

HRPP Rule 48(b) grants the trial court discretion to dismiss a charge with or without prejudice for violation of the speedy trial time limits. HRPP Rule 48(b) provides that the "court shall, on motion of the defendant, dismiss the charge, with or without prejudice in its discretion, if trial is not commenced within [the required time period.]" (Emphasis added.) Like its federal counterpart, HRPP Rule 48(b) does not create any presumption in favor of or against a dismissal with prejudice or a dismissal without prejudice. See United States v. Taylor, 487 U.S. 326, 335 & n.8 (1988) (concluding that the federal Speedy Trial Act does not give preference to either dismissal with prejudice or dismissal without prejudice). In exercising its discretion in choosing the appropriate remedy for violation of the HRPP Rule 48(b) time limits, the trial court must consider the Estencion factors, which are factors the Hawai'i Supreme Court adopted from the federal Speedy Trial Act. See Estencion, 63 Haw. at 269, 625 P.2d at 1044.

Contrary to Liu's contention, the State's failure to introduce evidence at the hearing, such as evidence showing that the delay in bringing the case to trial was justified, does not automatically require a dismissal with prejudice. In State v.

Kim, 109 Hawai'i 59, 122 P.3d 1157 (App. 2005), this court affirmed the trial court's dismissal of the charges without prejudice where the State provided no justification for violating the HRPP Rule 48(b) time limits. See Kim, 109 Hawai'i at 64, 66, 122 P.3d at 1162, 1164.

In deciding whether to dismiss a charge with or without prejudice under HRPP Rule 48(b), the trial court is required to consider the Estencion factors. Here, the District Court did not adequately consider the Estencion factors, and neither its findings nor the record enable us to meaningfully review its exercise of discretion. Based on the existing record, we cannot say that the only proper way for the District Court to exercise its discretion would be to dismiss the charges with prejudice. Therefore, it would be inappropriate to dismiss the charges with prejudice on appeal, without giving the trial court the opportunity to exercise its discretion and enter findings that explain its decision.

II.

Based on the foregoing, we vacate the District Court's Judgment, and we remand the case with instructions that the District Court: (1) consider the Estencion factors in determining whether to dismiss Liu's charges 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, May 27, 2016.

On the briefs:

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Chief Judge
[Signature]
Associate Judge
Savannah M. Rife
Associate Judge