

Electronically Filed  
Intermediate Court of Appeals  
CAAP-13-0003210  
18-MAY-2016  
08:40 AM

NO. CAAP-13-0003210

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellant/Cross-Appellee, v.  
BETTY A. FOSTER, Defendant-Appellee/Cross-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
(EWA DIVISION)  
(CASE NO. 1DTA-13-00279)

SUMMARY DISPOSITION ORDER

(By: Fujise, Presiding Judge, Leonard and Ginoza, JJ.)

Plaintiff-Appellant/Cross-Appellee State of Hawaii (State) and Defendant-Appellee/Cross-Appellant Betty A. Foster (Foster) appeal from the Notice of Entry of Judgment and/or Order and Plea/Judgment (Judgment), entered on August 6, 2013, by the District Court of the First Circuit, Ewa Division (District Court).<sup>1</sup> The Judgment dismissed without prejudice the charge of 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. 2015) brought against Foster on January 18, 2013.

On appeal, the State argues that the District Court erred by dismissing the charge because it was ready to proceed with trial. On cross-appeal, Foster claims the District Court erred by dismissing the charge without prejudice instead of with prejudice.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to

---

<sup>1</sup> The Honorable Clarence A. Pacarro presided.

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

The District Court abused its discretion by dismissing the charge against Foster because it lacked a legal basis for doing so.

A court does have inherent power to dismiss a criminal case. Under article VI, section 1 of the Hawai'i Constitution and HRS § 603-21.9 (1993), "which grants courts the power to take steps 'necessary' for the promotion of justice," a trial court's "inherent power include[s] the 'power to administer justice.'" State v. Mageo, 78 Hawai'i 33, 37, 889 P.2d 1092, 1096 (App. 1995) (citing State v. Moriwake, 65 Haw. 47, 55, 647 P.2d 705, 711-12 (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. (emphasis and alteration in original) (citations 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, 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. The District Court dismissed the charge prior to Foster's first trial. Foster did not allege a violation of her due process or other constitutional rights. Foster pointed to no evidence of arbitrary action or governmental misconduct. Both parties had asked to continue the trial before August 6, 2013.<sup>2</sup> This trial date was set at the request of Foster because she would be in Honolulu for another trial, yet on August 6, 2013 argued that

---

<sup>2</sup> Foster moved for a continuance on March 8, 2013. The State moved for a continuance on April 9, 2013 and May 28, 2013. The District Court continued the case *sua sponte* due to court congestion on July 16, 2013.

this other trial was the reason she could not proceed to trial on the instant charge. The State was ready to proceed with trial on this date and strenuously objected to the dismissal.

Furthermore, although the Hawai'i Rules of Penal Procedure Rule 48 deadline was mentioned by the District Court and the attorneys, it was undisputed that, as of August 6, 2013, the six-month deadline had not been reached, and the exact deadline was as yet undetermined.<sup>3</sup> Foster did not assert her constitutional right to a speedy trial, nor does she claim it was violated on appeal.

Given all the circumstances in this case, the dismissal as an exercise of the District Court's inherent power was an abuse of discretion.

Our resolution of the State's appeal renders Foster's appeal moot.

Therefore,

IT IS HEREBY ORDERED that the Notice of Entry of Judgment and/or Order and Plea/Judgment, filed on August 6, 2013, in the District Court of the First Circuit, 'Ewa Division is vacated and the case is remanded for proceedings consistent with this disposition.

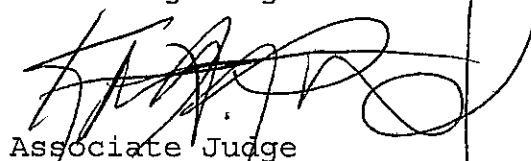
DATED: Honolulu, Hawai'i, May 18, 2016.

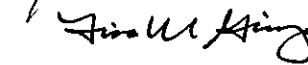
On the briefs:

Stephen K. Tsushima,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for Plaintiff-Appellant/  
Cross-Appellee

Birney B. Bervar,  
for Defendant-Appellee/  
Cross-Appellant.

  
Presiding Judge

  
Associate Judge

  
Associate Judge

---

<sup>3</sup> Foster filed several motions on May 14, 2013, all of which remained unresolved as of the August 6, 2013 trial date.