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Intermediate Court of Appeals
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NO. CAAP-13-0002529

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
v.
KARL C. SEE, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(Ewa Division)
(CASE NO. 1DTA-13-00359)

SUMMARY DISPOSITION ORDER

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

Plaintiff-Appellee State of Hawaii (State) charged Defendant-Appellant Karl C. See (See) with operating a vehicle under the influence of an intoxicant (OVUII). The District Court of the First Circuit (District Court)^{1/} dismissed the charge without prejudice.

On appeal, See contends that: (1) the District Court erred in dismissing the charge without prejudice because See did not move for dismissal of the charge but requested that his motions to suppress evidence be granted; and (2) the District Court improperly applied the factors set forth in State v. Estencion, 63 Haw. 264, 625 P.2d 1040 (1981), and abused its discretion in dismissing the charge without prejudice, instead of with prejudice. We affirm the District Court's dismissal of the charge without prejudice.

^{1/} The Honorable Paul B.K. Wong presided.

I.

On January 7, 2013, See was arrested for OVUII, and on January 24, 2013, the State charged See by complaint with that offense. See was arraigned on February 4, 2013. Trial was set for March 19, 2013, and See "Waived Speedy Trial and [Hawai'i Rules of Penal Procedure (HRPP)] Rule 48" from March 12, 2013, to March 19, 2013. On March 7, 2013, See filed a number of motions, including motions to suppress evidence. On March 19, 2013, the District Court granted the State's oral motion to continue, and the District Court continued the hearing on the motions and trial to May 7, 2013. The record indicates that the continuance was granted because the arresting officer was on "family leave" and not present.^{2/}

On April 24, 2013, See filed a motion to continue the case from May 7, 2013, to May 28, 2013, due to a scheduling conflict. The District Court granted the motion. At a hearing called on May 28, 2013, the State orally moved for its second continuance. The record does not indicate the reason for the State's request.^{3/} The District Court granted the State's motion and continued the case to July 9, 2013, for a hearing on motions.

At the hearing on July 9, 2013, the State moved to continue the case again on the grounds that the arresting officer was sick and the intoxilyzer operator was on vacation. The District Court noted that only the arresting officer was needed, and not the intoxilyzer operator, because the case had only been set that day for a hearing on See's motions, and not for trial. See objected to the State's request for a continuance. In response to the District Court's question, the State informed the District Court that the HRPP Rule 48 time limits expired on August 5, 2013. The District Court denied the State's motion for

^{2/} See did not include the transcript of March 19, 2013, hearing as part of the record on appeal. The reference to the arresting officer being on "family leave" is contained in the hearing notes included in the record.

^{3/} See did not include the transcript of the May 28, 2013, hearing as part of the record on appeal.

a continuance, and it advised the parties that it was going to dismiss the case because the State was not ready to proceed and any setting of the case would be beyond the expiration of the HRPP Rule 48 deadline.

The District Court then heard arguments from the parties regarding whether the dismissal should be with or without prejudice. The State argued that the dismissal should be without prejudice because See's breath alcohol concentration was 0.145 and that See's offense was a serious offense. See argued that his OVUIII offense was not a serious offense, as the Legislature had made it a petty misdemeanor, and that all the factors set forth in Estencion clearly weighed in favor of a dismissal with prejudice.^{4/}

The District Court dismissed See's OVUIII charge without prejudice, ruling as follows:

And in Mr. See's case, it is [an OVUIII] case, and yes, it is a petty misdemeanor. But with respect to the cases that comes before this Court, the Court does see it as a serious offense.

And here what brings us to the dismissal and the State not being ready, that the officer is not available, it's not a situation where the State does not know where they are and does not want to proceed with prosecution. So here while there is prejudice to Mr. See in having to come back, should or if the State were to refile its case, it's not a situation where it does offend the notions of justice.

So considering the factors in this case as well as *State v. Estencion*, 63 Hawaii 264, Court will dismiss Case No. 18 without prejudice. Any bail that's posted, the \$500, that's returned to Mr. See.

The District Court filed its Judgment on July 9, 2013, and this appeal followed.

^{4/} The "Estencion factors," which a trial court is required to consider in determining whether to dismiss a charge with or without prejudice for a violation of the HRPP Rule 48 time limits, 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)).

II.

We resolve the arguments raised by See on appeal as follows:

1. See argues that because he did not move to dismiss the OVUII charge based on the arresting officer's failure to appear but rather requested that his suppression motions be granted, the District Court erred in dismissing the charge without prejudice and should have granted his suppression motions. We disagree. See cites no authority for the proposition that a trial court is required to grant a suppression motion if an essential witness for the State is unable to appear due to illness. We conclude that the District Court was not required to grant See's suppression motions based on the non-appearance of the arresting officer and that it did not err in selecting dismissal of the charge without prejudice as a remedy for the State's inability to proceed with the suppression motions.

2. See argues that the District Court improperly applied the Estencion factors and abused its discretion in dismissing the OVUII charge without prejudice, instead of with prejudice. We disagree.

When the District Court dismissed the OVUII charge against See, the HRPP Rule 48 time limits had not expired and HRPP Rule 48 had not been violated. Because the Estencion factors apply specifically to the decision to dismiss a charge with or without prejudice for violation of HRPP Rule 48, it was not mandatory for the District Court to consider the Estencion factors in determining whether to dismiss the OVUII charge in this case with prejudice or without prejudice. Nevertheless, because the District Court's decision to dismiss the charge was based, at least in part, on its belief that the trial could not be set before the HRPP Rule 48 deadline if the suppression hearing was continued, it was appropriate for the District Court to consider the Estencion factors in exercising its discretion in deciding whether to dismiss the charge with or without prejudice.

The District Court explained its reasons for deciding to dismiss the case without prejudice, and we cannot say, based on our review of the record, that the District Court abused its discretion. See State v. Kim, 109 Hawai'i 59, 62, 122 P.3d 1157, 1160 (App. 2005) ("Generally, to constitute an abuse [of discretion], 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." (internal quotation marks and citation omitted)). We disagree with See's contention that the District Court's acknowledgment that it generally dismisses similar cases without prejudice meant that the District Court failed to consider the specific circumstances of See's case in rendering its decision. The District Court's explanation of its reasons for dismissing See's case without prejudice reveals that the District Court considered the specific circumstances of See's case in rendering its decision.

III.

For the foregoing reasons, we affirm the District Court's Judgment.

DATED: Honolulu, Hawai'i, June 2, 2016.

On the briefs:

Richard L. Holcomb
(Holcomb Law, LLC)
for Defendant-Appellant

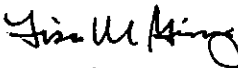
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Deputy Prosecuting Attorney
City and County of Honolulu
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Chief Judge



Associate Judge



Associate Judge