

NO. CAAP-13-0003817

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
v.
JESSE CARTER LAY, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT
(CR. NO. 09-1-0340)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Jessie Carter Lay (Lay) filed an appeal from the "Judgment of Conviction and Probation Sentence" (Judgment) entered by the Circuit Court of the Fifth Circuit (Circuit Court).¹ Lay was convicted of second-degree negligent injury and driving under the influence of an intoxicant.

Lay died while his appeal was pending, and his counsel filed a "Suggestion of Death." On August 15, 2016, this court issued an order seeking the position of each party regarding further proceedings in this case in light of the Suggestion of Death. In response, Lay's counsel stated that after consulting with representatives of Lay's estate, Lay's counsel does not intend to file a motion for substitution of party. The Circuit Court's Judgment did not include an order of restitution, and

¹The Honorable Randal G.B. Valenciano presided.

Lay's counsel represented that as the result of the settlement of a civil lawsuit, there was no issue of restitution in Lay's criminal case. Lay's counsel recommended that this court dismiss the appeal as moot, vacate the Judgment, and dismiss the underlying criminal case.

In its response to our order, Plaintiff-Appellee State of Hawai'i (State) asserted that there is no restitution owing in the underlying criminal case. The State further stated that it does not oppose dismissal of the appeal and the underlying criminal case.

In light of Lay's death while his appeal was pending, and since no motion for substitution of party has been filed by any party, there is no restitution order at issue, and the State does not oppose dismissal of the underlying criminal case, we exercise our discretion to dismiss the appeal as moot, vacate the Judgment, and dismiss the underlying criminal case. See State v. Makaila, 79 Hawai'i 40, 45, 897 P.2d 967, 972 (1995).

Accordingly, IT IS HEREBY ORDERED that this appeal is dismissed as moot, the Circuit Court's Judgment filed on October 3, 2013, is vacated, and the indictment against Lay in this case is dismissed.

DATED: Honolulu, Hawai'i, September 20, 2016.

On the briefs:

Daniel G. Hempey
(Hempey & Meyers LLP)
for Defendant-Appellant

Chief Judge

Tracy Murakami
Deputy Prosecuting Attorney
County of Kauai
for Plaintiff-Appellee

Associate Judge

Associate Judge