

FAX Distribution to:

- ☒ Prosecutor 808 241-1758
☒ Defense Attorney
 ☐ Public Defender 808 274-3422
 ☐ Private Attorney _____
☒ State Designate 808 832-1855
☐ 2nd Examiner Dr. _____
☐ 3rd Examiner Dr. _____
☒ KCMHC Forensics 808 241-3133
☒ AMHD Forensics 808 777-6169
☒ Sheriff Division 808 482-2389
☐ KPD Cellblock 808 241-1645
☐ KCCC 808 241-3059
☐ OCCC 808 832-1412
☐ HSH Forensics 808 236-8716
☐ Kahi Mohala 808 677-2810
☐ Other _____
☐ Other _____

**IN THE _____ COURT OF THE FIFTH CIRCUIT
STATE OF HAWAII**

STATE OF HAWAII,) **CR. No.** _____
) **FC-CR.** _____
vs.) **REP. NO(S):** _____
) _____
) _____
) _____
_____,)
Defendant.)
) **ORDER FINDING DEFENDANT UNFIT**
) **TO PROCEED, SUSPENDING**
) **PROCEEDINGS, AND RELEASING**
) **DEFENDANT ON CONDITIONS; RELEASE**
) **CONDITIONS**
) **[704-406(1), HRS]**
) _____
) **Hearing Date:** _____
_____) **JUDGE:** _____

**ORDER FINDING DEFENDANT UNFIT TO PROCEED,
SUSPENDING PROCEEDINGS, AND RELEASING DEFENDANT ON
CONDITIONS, RELEASE CONDITIONS**

The matter of Defendant's fitness examination pursuant to HRS Section 704-404 came on for hearing on _____. Defendant's counsel,

_____, and Deputy Prosecuting Attorney _____, representing the State of Hawaii, were present.
Defendant [] was physically present [] appeared by video-conferencing.

[Check applicable box below]

☐ The Court, having reviewed the report(s) of Defendant's appointed examiner(s), and noting that neither the State nor Defendant's counsel contests the findings and contents of the report(s), finds by a preponderance of the evidence as follows:
OR

☐ This Court, having reviewed the report(s) of Defendant's appointed examiner(s), and having held a hearing pursuant to HRS Section 704-405, considered the evidence presented, adjudged the credibility of the witness(es) testifying at the hearing, and having considered the arguments of counsel at the hearing, finds by a preponderance of the evidence as follows:

1. **Defendant is unfit to proceed** on the above charge(s);
2. Defendant can be released on conditions without danger to Defendant, or another, or risk of substantial danger to property of others.

Therefore, IT IS HEREBY ORDERED as follows:

1. The proceedings against Defendant in this case are hereby suspended, except as to those matters authorized under Section 704-407, Hawaii Revised Statutes.
2. Pursuant to HRS Section 704-406(1), Defendant is released on the terms and conditions contained in the attached RELEASE CONDITIONS.

- a. Limited Period of Release on Conditions (Non-Violent Misdemeanor)
Pursuant to §704-406(1):
[check box below if applicable]

☐ As Defendant is charged with a MISDEMEANOR not involving violence or attempted violence, the period of release on conditions shall be limited to no longer than ONE HUNDRED TWENTY (120) DAYS from the date of this hearing, and the provisions of paragraph 2.b. and 2.c., hereinafter, shall apply. Said 120-day period shall expire on _____.

- b. Dismissal of Charge(s):

If the defendant has not been found fit to proceed upon the expiration of the relevant period of release on conditions, as set forth in paragraph 2a (_____, 20____), then the

charge(s) for which the defendant has been released on conditions shall be dismissed.

c. Discharge and/or Commitment after Dismissal:

Upon dismissal of the charge, the Defendant shall be:
[Check ONE box below, if applicable]

☐ Discharged from the release conditions (not subject to prosecution for other charges and/or involuntary civil commitment).

OR

☐ Committed to the custody of the Director of Health to be placed in an appropriate institution for detention, care, and treatment (subject to prosecution for other charges and not subject to involuntary civil commitment).

3. The Department of Health shall have supervision over Defendant, shall instruct Defendant regarding the terms and conditions of release, and shall furnish to Defendant a copy of this Order Finding Defendant Unfit to Proceed, Suspending Proceedings, and Releasing Defendant on Conditions. The original RELEASE CONDITIONS shall be signed by Defendant and filed herein.
4. The Adult Client Services Branch shall provide Defendant's treating physician(s) with copies of all of Defendant's medical and mental health records in the possession of the probation office, to be used only for the purposes of care and treatment of the Defendant. The records shall be kept confidential pursuant to that physician(s)' policy and procedure concerning maintenance, transmission, and interchange of written, verbal, and/or electronically recorded protected health information and pursuant to applicable state and federal laws.
5. **The Clerk of the Court shall provide a copy of the report(s) prepared by the examiner(s) appointed pursuant to HRS Section 707-404 to the Department of Health, along with a copy of this Order of release on conditions pursuant to HRS Section 704-406(1). The report(s) shall be kept confidential pursuant to Rule 9 of the Hawaii Court Records Rules and applicable state and federal law, and shall not be disclosed to any other person or agency.**
6. Defendant is ordered to appear at all review hearings set by this Court, the first of which is set for _____ at _____ .m.

DATED: Lihue, Hawaii, _____.

Judge

APPROVED AS TO FORM on _____:

Deputy Prosecuting Attorney

Defense Counsel

Defendant's Tel. No.: _____

Defendant's Email Address: _____

In the _____ Court of the Fifth Circuit, State of Hawaii

Case No. _____

**RELEASE CONDITIONS [704-406(1)]
AMENDED**

TO: _____, Defendant:

YOUR RELEASE SHALL BE ON THE FOLLOWING TERMS AND CONDITIONS:

1. You shall not violate any federal or state laws.
2. You are placed under the supervision of a case manager with the Department of Health, and you must follow all directions given to you by your case manager and treatment team.
3. You must maintain mental health and/or psychiatric treatment, as directed by your case manager, until you are clinically discharged. You must keep all appointments with your case manager and all appointments for treatment. You must take all medication prescribed to you, as directed by your doctor(s). You must comply with the treatment plan developed by your treatment team.
4. Your case manager or any mental health professional treating you shall promptly notify the Office of the Prosecuting Attorney should they believe that you are either not complying with your treatment plan or there is evidence that hospitalization is appropriate.
5. You must sign Waiver of Confidentiality form(s) to allow your case manager and treatment team to monitor your compliance with drug and alcohol treatment, mental health treatment, and/or any other treatment required by these Release Conditions.
6. You must notify your case manager of any change in your address or phone number, prior to changing your address or phone number.
7. You must not leave the island of Kauai (or other location to which you have been authorized to move) without first obtaining permission from the Court.
8. You shall follow all instructions and directions given to you by your treatment team.
9. The Court may order you temporarily hospitalized for seventy-two (72) hours for violating any of the terms of these Release Conditions.
10. You may not own or possess any firearms, ammunition, or any dangerous instrument, as defined by law.
11. You must appear at all review hearings set by this Court, the first of which is set for _____ at _____ .m.

12. If your whereabouts become unknown to your case manager because of your failure to keep your case manager informed, the Court may order your arrest. Any failure by you to comply with all of the terms of your Release Conditions will mean that the Court can revoke your release and place you into the custody of the Director of Health for detention, care, and treatment.

13. Your further special conditions are as follows:

- ___ A. You shall obtain professional mental health and/or case management services from the Department of Health, Adult Mental Health Division services provider, and you shall comply with the treatment plan developed for you.
- ___ B. You shall reside in a group home, care home or other residence as approved by your case manager and/or treatment team, and you shall follow all house rules including curfew and travel restrictions.
- ___ C. You shall participate in educational, vocational, and/or employment training and other activities as determined by your case manager and/or treatment team.
- ___ D. You shall not possess or consume alcohol, illegal drugs, and unprescribed drugs.
- ___ E. You shall submit to drug and alcohol testing as directed by your case manager and/or treatment team. A positive test or a failure to provide a specimen within two (2) hours of instruction may be considered prima facie evidence of a violation of these Release Conditions.
- ___ F. You shall obtain and maintain outpatient and/or residential drug/alcohol treatment, including taking all prescribed medication and submitting to testing as instructed by your case manager (including blood tests), until you are clinically discharged with the agreement of your treatment team.
- ___ G. You shall attend sober support meetings as determined by your case manager and/or treatment team and submit verification of your attendance to your case manager and/or treatment team.
- ___ H. Other terms: _____

The foregoing terms and conditions have been explained to me, and I fully understand them and agree to abide by them in every way. A copy of these

RELEASE CONDITIONS has been given to me.

Dated: _____

(Signature of Defendant)

(Signature of Case Manager/Witness)

(Print Name of Witness)