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IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I,
Respondent/Plaintiff-Appellee,

vs.

LISA E. ALKIRE,
Petitioner/Defendant-Appellant.

SCWC-17-0000638

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-17-0000638; 1DTA-16-03825)

JUNE 25, 2020

CONCURRING AND DISSENTING OPINION BY NAKAYAMA, J.,
IN WHICH RECKTENWALD, C.J., JOINS

I concur with the majority's holdings that (1) the prosecution was not required to personally review files of the testifying police officers to satisfy its burden to disclose any favorable evidence to the defense; and (2) the defendant was entitled to discovery of the video recording of herself at the

police station.

I write separately because I disagree with the majority's interpretation that Hawai'i Rules of Penal Procedure (HRPP) Rule 48 requires a "meaningful" commencement of trial. Majority at 26. HRPP Rule 48 requires a trial court to grant a defendant's motion to dismiss the charge "if trial is not commenced within 6 months [] from the date of arrest[.]" The majority's holding effectively amends HRPP Rule 48 without following our usual procedure for amending the court rules. In addition, the majority offers no practical guidance to trial courts regarding what constitutes a meaningful commencement.

I. DISCUSSION

Notwithstanding the plain language of HRPP Rule 48, the majority announces a new rule under the guise of effectuating the intent of HRPP Rule 48, by holding that HRPP Rule 48 is violated unless a trial "meaningfully" commences within six months from the date of arrest, meaning that "a trial court has 'reasonably' committed its resources to the trial," as held by Rhinehart v. Municipal Court, 677 P.2d 1206, 1211-12 (Cal. 1984). Majority at 26. The majority's new rule is not supported by the plain language of HRPP Rule 48. Because the defendant's trial commenced well within the time allowed under HRPP Rule 48, the district court's denial of the HRPP Rule 48

motion was not clearly erroneous and the ICA did not err in holding there was no HRPP Rule 48 violation.

"[W]hen interpreting rules promulgated by the court, principles of statutory construction apply." Gap v. Puna Geothermal Venture, 106 Hawai'i 325, 331, 104 P.3d 912, 918 (2004) (citation and internal quotation marks omitted). This court's construction of statutes is guided by the following rules:

First, the fundamental starting point for statutory interpretation is the language of the statute itself. Second, where the statutory language is plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning. Third, implicit in the task of statutory construction is our foremost obligation to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. Fourth, when there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists.

State v. Choy Foo, 142 Hawai'i 65, 72, 414 P.3d 117, 124 (2018) (quoting State v. Wheeler, 121 Hawai'i 383, 390, 219 P.3d 1170, 1177 (2009)) (internal citation omitted).

Thus, the starting point of our inquiry is the language of HRPP Rule 48 (2000), which provides:

Rule 48. Dismissal.

. . . .

(b) By court. Except in the case of traffic offenses that are not punishable by imprisonment, the court shall, on motion of the defendant, dismiss the charge, with or without prejudice in its discretion, if trial is not commenced within 6 months:

(1) from the date of arrest[.]

The plain language of HRPP Rule 48 states that if trial is not commenced within six months, the court shall dismiss the charge

upon the defendant's motion. HRPP Rule 48 mandates nothing more than timely commencement of trial and does not require that trial commence "meaningfully." Because the language of HRPP Rule 48 is "'plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning.'" See id. at 72, 414 P.3d at 124 (quoting Wheeler, 121 Hawai'i at 390, 219 P.3d at 1177). In this case, the defendant was arrested on October 15, 2016 and trial commenced on January 10, 2017. Accordingly, under the plain language of HRPP Rule 48, there was no violation because the defendant's trial commenced within six months "from the date of arrest[.]"

The plain language of HRPP Rule 48 requires dismissal of a charge upon defendant's motion based on failure to commence trial within six months. Despite the fact that HRPP Rule 48 is silent on the quality of commencement, the majority reads language into the rule that is simply not there, effectively amending the rule by interpreting it to require "meaningful commencement." Majority at 26. The majority's "meaningful commencement" requirement goes beyond both Rhinehart and HRPP Rule 48 itself.

Despite HRPP Rule 48's plain language, the majority divines a new rule based on policy considerations. The majority claims that requiring meaningful commencement will better

effectuate the intent of HRPP Rule 48, which in addition to ensuring an accused a speedy trial, is intended to “further ‘policy considerations to relieve congestion in the trial court, to promptly process all cases reaching the courts, and to advance the efficiency of the criminal justice process.’”¹

Majority at 25 (quoting State v. Fukuoka, 141 Hawai‘i 48, 62-63, 404 P.3d 314, 328-29 (2017)). It is dubious that the majority’s new rules will better effectuate the additional policy considerations behind HRPP Rule 48, but even if the majority’s claim is correct, the plain and unambiguous language of HRPP Rule 48 does not permit us to expand it to achieve these goals.

In holding that HRPP Rule 48 requires a “meaningful” commencement of trial, the majority claims to adopt the standard set forth by the California Supreme Court:

[A]n accused is “brought to trial” within the meaning of [California’s dismissal rule] when a case is called for trial by a judge who is normally available and ready to try

¹ Indeed, the primary problem that the majority seeks to address with its new rule appears to be delays due to court congestion. The majority speculates that, in this case, trial was continued to March 16, 2017 “due to chronic court congestion.” Majority at 12. However, the record does not support that conclusion. Rather, after going off the record for one minute and two seconds, the district court stated that “we’ve all agreed upon further trial March 16, 2017[.]” While the defendant later argued that her trial was continued due to chronic court congestion, the record indicates that the defense agreed to the continuance after the first day of trial and after the second day of trial, defense counsel actually requested an even lengthier continuance to allow time to order a transcript of proceedings, which the district court denied. Thus, it is unclear from the record that chronic court congestion was the reason that trial was not completed until ten months after the defendant’s arrest.

the case to conclusion. The court must have committed its resources to the trial, and the parties must be ready to proceed and a panel of prospective jurors must be summoned and sworn.

Rhinehart, 677 P.2d at 1211-12.

In so holding, the California Supreme Court provided a standard for when an accused is brought to trial in order to prevent trial courts from commencing trial as a sham to avoid the state's dismissal rule, which is similar to HRPP Rule 48. In Rhinehart, the trial court "stated that the only reason for impaneling a jury on that date was to avoid a dismissal under [California's dismissal rule]" and, after the jury was impaneled, the court told the jurors that it was not available to try the case for at least six more days because another trial was in progress. Id. at 1208-09. The California Supreme Court held that because the trial court was "not available or ready to try the case to conclusion[,]" the defendant was not "brought to trial within the meaning of [California's dismissal rule]." Id. at 1212. Thus, under Rhinehart, if commencement of trial is merely perfunctory – meaning that the court has not committed its resources to the trial – an accused has not been brought to trial.

Even under Rhinehart's definition of commencement of trial, if the majority's new rule applied retroactively in this case, the defendant's speedy trial claim would still fail

because the district court "committed its resources to the trial" on January 10, 2017, and trial commenced on that date. See id. On January 10, 2017, the district court, after dispensing with several defense motions, (1) obtained agreement from the State and the defendant to consolidate the trial with the motion to suppress hearing; (2) had the State make a plea offer to the defendant, which she rejected; and (3) apprised the defendant of her right to testify or not to testify. The parties then stated that they were ready to proceed and the State called the patrol officer as its first witness, who testified as to how he encountered and stopped the defendant. Defense counsel subsequently cross-examined the patrol officer. These actions indicate that, on January 10, 2017, the district court "committed its resources to the trial," and trial thus meaningfully commenced under the Rhinehart standard. See id. Here, commencement of trial was neither perfunctory nor a sham to avoid dismissal under HRPP Rule 48.

The plain language of HRPP Rule 48 provides for mandatory dismissal upon a defendant's motion if trial is not commenced within six months, which is a clear rule for courts to implement. In contrast, the majority's new rule requiring "meaningful commencement" is vague and offers little practical guidance for courts to apply. The majority states that "a trial

is 'meaningfully' commenced when a trial court has 'reasonably' committed its resources to the trial, which also requires that the parties be ready to proceed, and, if applicable, a panel of prospective jurors summoned and sworn, as held by Rhinehart, 677 P.2d at 1211-12." Majority at 26. However, the Rhinehart court held that merely impaneling a jury was not sufficient to bring a defendant to trial within the meaning of California's dismissal rule. Id. at 1208, 1212. Thus, the majority offers insufficient practical guidance regarding how to satisfy its meaningful commencement requirement because the majority does not explain what is required for a trial court to have "'reasonably' committed its resources to the trial[]" – beyond the parties' readiness to proceed and that a jury is summoned and sworn, if applicable. See Majority at 26. Rules must be clearly stated so that courts can apply them, but the phrase "'reasonably' committed its resources to the trial" is so vague that is of little help.

By interpreting HRPP Rule 48 to require "meaningful commencement" of trial, the majority effectively amends HRPP Rule 48 and evades this court's usual process for amendments. The usual process is that an amendment to the HRPP is first considered and proposed by the Permanent Committee on Rules of Penal Procedure, which is comprised of representatives of the

Judiciary, the Attorney General, the State Public Defender, the county prosecutors, and private defense counsel. "The Committee's recommendations are critical, given its members' familiarity with the applicable law and the cases that will ultimately be governed by the [HRPP]." Cox v. Cox, 138 Hawai'i 476, 493, 382 P.3d 288, 305 (2016). In addition, it is usually submitted for public comment by interested parties. See Proposed Rule Changes, Hawai'i State Judiciary, https://www.courts.state.hi.us/legal_references/rules/rulesOfCourt (seeking public comment on proposed amendments to Rules of Court). After receiving comment and input from the stakeholders, this court considers the amendment and decides whether to adopt it. By following this court's established process for amending rules, we make informed decisions regarding amendments to the HRPP and avoid any unintended consequences that might arise from making an uninformed decision.²

² This is the first time that this court has considered delays occurring after commencement of trial and whether a trial has "meaningfully" commenced. See, e.g., State v. Jackson, 81 Hawai'i 39, 52, 912 P.2d 71, 84 (1996) (interpreting "the plain language of HRPP Rule 48 . . . [to] apply only to events and circumstances that cause a 'delay' in the commencement of trial").

In the majority of jurisdictions, it is generally understood that a defendant's speedy trial rights are violated by failure to commence trial and not by delays after trial commences which make commencement of trial less robust than the majority now requires. See e.g., Fla. R. Crim. P. 3.191 (West 2020) (providing for mandatory dismissal if trial is not commenced within statutory deadlines and defining commencement as "when the trial jury panel for that specific trial is sworn for voir dire examination or . . . when the trial proceedings begin before the judge"); (N.Y. Crim. Proc. Law

(continued . . .)

The reality is that trial may be started and continued for a variety of reasons, such as witness availability, unavailability of counsel due to personal reasons or other proceedings, and availability of judges and courtrooms. The majority's new rule ignores these realities.

The majority's new rule might actually cause courts to be less efficient. HRPP Rule 48 calculations were already complicated, but courts will now have to perform these calculations for trials that have already commenced, when previously they did not.³ Then, once a trial court determines that HRPP Rule 48's new meaningful commencement requirement has been violated, even if trial already commenced, the court will need to apply the factors set forth in State v. Estencion, 63

§ 30.30 (McKinney's 2020) (providing for mandatory dismissal if the prosecution is not ready for trial within six months for felonies and ninety days for misdemeanors). See also American Bar Association, ABA Standards for Criminal Justice 39 (3rd ed. 2006) ("A defendant's right to a speedy trial should be formally recognized and protected by rule or by statute that establishes outside limits on the amount of time that may elapse from the date of a specific event until the commencement of the trial or other disposition of the case.") (emphasis added). Thus, the majority's new rule is a departure from generally accepted speedy trial rules because it focuses not merely on commencement, but on whether commencement is "meaningful." As such, this new rule would benefit from going through the usual process for amending the HRPP, in order to allow the opportunity to fully consider the practical implications and application of such a rule.

³ HRPP Rule 48 calculations are not simply performing arithmetic. In a case like this one, for example, the district court would be required to specifically analyze each of the nine motions filed by the defense in light of HRPP Rule 48(d), which governs excludable and includable periods for defense motions.

Haw. 264, 269, 625 P.2d 1040, 1044 (1981), to determine whether the case should be dismissed with or without prejudice. Thus, the majority's new rules will not further the policy goals of promptly processing all cases or increasing efficiency because courts will spend more time addressing HRPP Rule 48 motions and less time actually conducting trials.

The majority's interpretation that HRPP Rule 48 requires "meaningful commencement" of trial is contradicted by the plain and unambiguous language of HRPP Rule 48. The policy objectives that the majority hopes to further – relieving court congestion, promptly processing all cases, and increasing efficiency – may actually be hindered by its new rule, as trial courts will now have to contend with more HRPP Rule 48 motions, even for trials that commenced well within the HRPP Rule 48 deadline, as occurred in this case. Thus, I disagree with the majority's interpretation of HRPP Rule 48. On the facts of this case, the defendant's trial commenced well within the time allowed under HRPP Rule 48, and the district court's denial of the HRPP Rule 48 motion was not clearly erroneous.

II. CONCLUSION

I would affirm the ICA's holding that the defendant's speedy trial rights were not violated. However, I join with the majority in concluding that the district court abused its

discretion in denying the defendant's motion to compel video recording.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

