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SCMF-20-0000152

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

In the Matter of the Judiciary’s Response
to the COVID-19 Outbreak

DISSENT RE: ORDER REGARDING TEMPORARY EXTENSION
OF THE TIME REQUIREMENTS UNDER HAWAI‘I RULES OF PENAL PROCEDURE
RULE 10(a), (b), and (c) (CIRCUIT COURT OF THE THIRD CIRCUIT)
(By: Wilson, J.)

Again, this court suspends the rights of incarcerated people to be released if they do not receive a timely opportunity to be informed of the charges against them and a timely opportunity to answer those charges by entering a plea of guilty or not guilty.¹ Again, people presumed not guilty who are charged with nonviolent offenses--and who are entitled to their

¹ See Dissent to Amended Order Re: Felony Defendants (filed August 18, 2020); Order Re: Petty Misdemeanor, Misdemeanor, and Felony Defendants at Maui Community Correctional Center, Hawai‘i Community Correctional Center, and Kaua‘i Community Correctional Center (filed August 24, 2020); Order Re: Petty Misdemeanor, Misdemeanor, and Felony Defendants (filed August 27, 2020); and Order Denying Petitioner’s “Motion to Compel Compliance with This Court’s Orders” (filed September 1, 2020) at 27-37, In re: Individuals in Custody of the State of Hawai‘i, SCPW-20-0000509, docket #110, filed Feb. 18, 2021; see also Concurrence and Dissent Re: Order Re: Temporary Extension of the Time Requirements Under Hawai‘i Rules of Penal Procedure Rule 10(a), (b), and (c) at 1, In re Judiciary’s Response to the COVID-19 Outbreak, SCMF-20-0000152, docket #45, filed Aug. 20, 2020.

freedom under Rule 10 of the Hawai'i Rules of Penal Procedure ("HRPP")--are instead held in custody, subject to the lethal threat of COVID-19. No distinction is made between people held pretrial for arraignment who pose a risk of flight and those who pose no such risk. Instead, a wholesale surrender of the right of release for every incarcerated person awaiting arraignment is imposed by the suspension of Rule 10 in the third circuit. In so doing, this court acts purely sua sponte, without providing the Office of the Public Defender or the Prosecuting Attorney the opportunity to respond.

In one week, the number of COVID-19 cases at Hawai'i Community Correctional Center ("HCCC") has surged to over seventy-one inmates. No showing has been made that the rapidly escalating threat of COVID-19 necessitates prolonged incarceration of inmates awaiting arraignment who are nonviolent and are held simply because they cannot afford bail. No showing has been made that releasing pretrial inmates charged with nonviolent offenses who pose no flight risk is not a far less restrictive means of protecting court personnel than prolonging their incarceration by suspending their right to a timely arraignment under HRPP Rule 10. Absent a showing of least restrictive means, their continued incarceration constitutes a violation of their right to be free from cruel and unusual conditions created by the rampant spread of COVID-19 at HCCC.

Accordingly, I respectfully dissent to the Majority's Order extending the suspension of HRPP Rule 10 for every incarcerated person, at HCCC.

DATED: Honolulu, Hawai'i, June 1, 2021.

/s/ Michael D. Wilson
Associate Justice

