

**Electronically Filed
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NO. CAAP-19-0000724

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
DAVID T. PREBLE, also known as
David Taofiaualii Preble, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CASE NO. 1PC990002363 (CR. NO. 99-2363))

ORDER GRANTING IN PART MOTION FOR CLARIFICATION
(By: Ginoza, C.J., and Hiraoka, and Wadsworth, JJ.)

Upon consideration of the June 24, 2021 Motion for Clarification (**Motion for Clarification**) filed by Plaintiff-Appellee State of Hawaii (**State**), which we construe in part as a motion for reconsideration pursuant to Hawaii Rules of Appellate Procedure (**HRAP**) Rule 40,^{1/} and the record, it appears that:

(1) On June 16, 2021, this court issued its Memorandum Opinion in this appeal. The conclusion of the Memorandum Opinion, starting at the bottom of page 17 and continuing onto the top of page 18, states in part: "[W]e vacate the Third Amended Judgment of Conviction and Sentence [**Judgment**], entered on September 24, 2019, in the Circuit Court of the First Circuit, solely as to the resentencing of [Defendant-Appellant David] Preble [**Preble**], and remand for further resentencing proceedings, including an accurate calculation of Preble's credit

^{1/} On July 2, 2021, this court issued an Order Suspending Time Requirement, under which the time in which this court must dispose of the Motion for Clarification was extended to July 15, 2021.

for time served, consistent with this Memorandum Opinion and [State v.]Thompson[, No. SCWC-17-0000427, 2020 WL 2846618 (Haw. June 1, 2020) (SDO)]."

(2) In the Motion for Clarification, the State asserts:

In State v. Thompson, this Court affirmed the circuit court's judgment of conviction and sentence. However, on application for writ of certiorari, the Hawai'i Supreme Court vacated this Court's judgment on appeal and remanded the case to the circuit court for an accurate calculation of Thompson's credit for time served. At no time did the Hawai'i Supreme Court vacate the circuit court's sentence or order resentencing. The Hawai'i Supreme Court simply ordered the circuit court to perform an accurate calculation of Thompson's credit for time served.

(Footnotes omitted.) Accordingly, the State "ask[s] this Court to clarify that in this case, as in Thompson, this Court is affirming the circuit court's judgment of conviction and sentence, but ordering the circuit court to perform an accurate calculation of Preble's credit for time served."

(3) The Judgment in this case states in part: "Total 35 years jail with credit and any credit for time served shall be determined by State Department of Public Safety." For the reasons stated in the Memorandum Opinion, the Judgment as to Preble's resentencing thus failed to give Preble credit for the time he served on his original 2001 sentence, as required under Thompson. The Judgment was thus properly vacated as to Preble's resentencing, to the extent the Judgment failed to give Preble credit for time served on his original sentence. The Memorandum Opinion was not intended to vacate other aspects of Preble's resentencing.

Therefore,

IT IS HEREBY ORDERED that the Motion for Clarification is granted in part.

IT IS FURTHER ORDERED that the last paragraph of the Memorandum Opinion, starting at the bottom of page 17 and continuing onto the top of page 18, shall be corrected to read:

For the reasons discussed above, we vacate the Third Amended Judgment of Conviction and Sentence, entered on September 24, 2019, in the Circuit Court of the First Circuit, solely as to the resentencing of Preble, to the extent the Third Amended Judgment of Conviction and Sentence failed to give Preble credit for time served on his original sentence. We remand for further resentencing proceedings,

including an accurate calculation of Preble's credit for time served, consistent with this Memorandum Opinion and Thompson.

The Amended Memorandum Opinion is being filed simultaneously.

The Motion for Clarification is denied in all other respects.

DATED: Honolulu, Hawai'i, July 13, 2021.

/s/ Lisa M. Ginoza
Chief Judge

/s/ Keith K. Hiraoka
Associate Judge

/s/ Clyde J. Wadsworth
Associate Judge