

NO. CAAP-20-0000776

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

CITY AND COUNTY OF HONOLULU, by the DEPARTMENT OF THE CORPORATION
COUNSEL, Appellant-Appellant,
v.
HONOLULU POLICE COMMISSION, Appellee-Appellee,
and
LOUIS M. KEALOHA, Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 1CC191000907)

ORDER DENYING RECONSIDERATION

(By: Ginoza, Chief Judge, Hiraoka and McCullen, JJ.)

Appellant-Appellant **City** and County of Honolulu's
Motion for Reconsideration, filed March 28, 2022, contends:

"1. The Court overlooked that the circuit court's and the Honolulu Police Commission's rulings regarding the complaint allegation rule are inconsistent with the Court's Opinion regarding said doctrine and should thus be vacated"; and

"2. The Court misapprehended the City's argument with regard to the requirement that Louis Kealoha's ("Kealoha") actions for which he was criminally charged must have been actuated at least in part by a purpose to serve his (now former) employer and overlooked the constitutional problem that arises by not requiring that employer connection."

1. This Court's task on the City's secondary appeal was to determine whether the Circuit Court's **Final Judgment** was right or wrong by applying the standards set forth in Hawaii Revised Statutes (HRS) § 91-14(g) (Supp. 2019) to the Honolulu **Police Commission's** "Findings of Fact, Conclusions of Law, and Decision and Order" (**Decision & Order**). See Flores v. Bd. of Land & Nat. Res., 143 Hawai'i 114, 120, 424 P.3d 469, 475 (2018) (explaining that the "standard of review is one in which this court must determine whether the circuit court was right or wrong in its decision, applying the standards set forth in HRS § 91-14(g) [1993] to the agency's decision") (brackets in original) (citations omitted).

The Police Commission's Decision & Order did not mention or apply the complaint allegation rule.¹ We held that the Police Commission properly applied its administrative rules to the relevant facts in the record. Accordingly, this Court's Opinion affirmed the Final Judgment, which affirmed the Police Commission's Decision & Order.

The complaint allegation rule **was** cited in the Circuit Court's "Order Affirming Findings of Facts, Conclusions of Law, and Decision and Order Dated May 10, 2019 of the Honolulu Police Commission" (**Order Affirming Decision & Order**). This Court's Opinion did **not** affirm the Order Affirming Decision & Order; to the contrary, we held that "[t]he complaint allegation rule **does not apply** to the Police Commission's determination in this case." Opinion at 15 (emphasis added).

The Circuit Court's Final Judgment did not mention the complaint allegation rule. This Court's Opinion affirmed the Final Judgment because the Final Judgment affirmed the Police Commission's Decision & Order, notwithstanding the Circuit

¹ As the City points out, during the Police Commission's contested case hearing Kealoha's attorney advocated application of the complaint allegation rule. However, the Police Commission's Decision & Order neither cites nor applies the complaint allegation rule, and the record contains no other indication that the Police Commission applied the complaint allegation rule to its HRS § 52D-19 determination.

Court's erroneous application of the complaint allegation rule. See State v. Enos, 147 Hawai'i 150, 164, 465 P.3d 597, 611 (2020) (noting "it is well-settled that an appellate court may affirm a judgment of the lower court on any ground in the record that supports affirmance") (cleaned up).

2. The City contends that this Court erroneously rejected the "scope of employment" test because the "granting of Kealoha's legal request to defend him against the federal corruption charges means public funds would be expended without a public purpose to support it in contravention of constitutional limits." The City did not raise an "unconstitutional as applied" argument before the Police Commission or in its appeal to the Circuit Court. Thus, we decline to address this constitutional challenge. State v. Hicks, 113 Hawai'i 60, 74, 148 P.3d 493, 507 (2006) (declining to address a constitutional challenge raised for the first time on appeal).

Therefore, IT IS HEREBY ORDERED that the City's Motion for Reconsideration is denied.

DATED: Honolulu, Hawai'i, April 5, 2022.

/s/ Lisa M. Ginoza
Chief Judge

/s/ Keith K. Hiraoka
Associate Judge

/s/ Sonja M.P. McCullen
Associate Judge