IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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

vs.

JONATHAN S. VADEN,
Petitioner/Defendant-Appellant.

SCWC-20-0000481

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-20-0000481; CASE NO. 2CPC-18-0000844)

MARCH 15, 2023

DISSENTING OPINION BY WILSON, J., WITH WHOM McKENNA, J., JOINS

I. Introduction

I respectfully dissent to the Majority's improper extension of the sentence of all people serving consecutive sentences who have been incarcerated pretrial and during their probation. In so doing the Majority increases the population of

Hawai'i's incarcerated people in violation of Hawai'i Revised Statutes ("HRS") §§ 706-671(1) and 706-671(2)[1]. Based on the plain language of the statutory provisions, Vaden's presentence detention[2] time and probation incarceration[3] time should be deducted from each of the five-year and ten-year sentences comprising his fifteen-year consecutive sentence, rather than just once from the aggregate fifteen-year consecutive sentence. The Majority's misinterpretation of the credit due Vaden for his

[1] HRS § 706-671 (2012) provides in relevant part:

> (1) When a defendant who is sentenced to imprisonment has previously been detained in any State or local correctional or other institution following the defendant's arrest for the crime for which sentence is imposed, such period of detention following the defendant's arrest shall be deducted from the minimum and maximum terms of such sentence. The officer having custody of the defendant shall furnish a certificate to the court at the time of sentence, showing the length of such detention of the defendant prior to sentence in any State or local correctional or other institution, and the certificate shall be annexed to the official records of the defendant's commitment
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> (2) When a judgment of conviction or a sentence is vacated and a new sentence is thereafter imposed upon the defendant for the same crime, the period of detention and imprisonment theretofore served shall be deducted from the minimum and maximum terms of the new sentence. The officer having custody of the defendant shall furnish a certificate to the court at the time of sentence, showing the period of imprisonment served under the original sentence, and the certificate shall be annexed to the official records of the defendant's new commitment.

[2] As the Majority explains, Vaden's presentence detention time refers to both: (1) the time Vaden served from his initial arrest to the initial sentencing and (2) the time Vaden served between his (re)arrest in connection with his termination from the Maui Drug Court Program and resentencing.

[3] Vaden's probation incarceration time refers to the time Vaden served under probation which was later revoked.

previous incarceration improperly extends Vaden's sentence by failing to deduct 340 days credit from Vaden's ten-year sentence. Depriving Vaden of credit towards each of the offenses comprising his fifteen-year consecutive sentence contravenes important Hawai'i public policy, codified in HRS § 353L-3(b)[4], to reduce the State's incarcerated population.

In addition, the plea agreement entered into in this case was illegal, because it precluded the circuit court from applying Vaden's individual circumstances to his resentencing for violation of his probation, as is required under HRS § 706-606.[5,6]

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[4] HRS § 353L-3(b) (2019) provides, in part:

> The [Hawai'i Correctional Oversight Commission] shall:
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> (1) Oversee the State's correctional system and have jurisdiction over investigating complaints at correctional facilities and facilitating a correctional system transition to a rehabilitative and therapeutic model;
>
> (2) Establish maximum inmate population limits for each correctional facility and formulate policies and procedures to prevent the inmate population from exceeding the capacity of each correctional facility[.]

[5] HRS § 706-606 (1986) provides:

> The court, in determining the particular sentence to be imposed, shall consider:
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> (1) The nature and circumstances of the offense and the history and characteristics of the defendant;
> (2) The need for the sentence imposed:
> (a) To reflect the seriousness of the offense, to promote respect for law, and to provide just punishment for the offense;

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II. Background

In 2018, the State charged Vaden with drug and property crimes in five unrelated cases: 2CPC-18-0000315 (fifteen counts), 2CPC-18-0000348 (one count), 2CPC-18-0000413 (three counts), and 2CPC-18-0000457 (one count) (together, the "four cases") and the instant case, 2CPC-18-0000844 (six counts) (together with the four cases, the "five cases").[7] He was

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> (b) To afford adequate deterrence to criminal conduct;
> (c) To protect the public from further crimes of the defendant; and
> (d) To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
> (3) The kinds of sentences available; and
> (4) The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

[6] I note that I agree with the Majority's contention, however, that trial courts should not consent to the waiver of pre-sentence reports as a matter of course.

[7] The charged offenses across all five cases were as follows:

2CPC-18-0000315:

- Count 1: Burglary in the Second Degree
- Count 2, 8, 9: Theft in the Second Degree
- Count 3, 4, 5: Credit Card Theft
- Count 6: Fraudulent Use of a Credit Card
- Count 7: Unauthorized Possession of Confidential Personal Information
- Count 10, 11: Promoting a Dangerous Drug in the Third Degree
- Count 12, 13: Promoting a Harmful Drug in the Fourth Degree
- Count 14: Promoting a Detrimental Drug in the Third Degree
- Count 15: Prohibited Acts related to Drug Paraphernalia

2CPC-18-0000348:

- Count 1: Attempted Burglary in the Second Degree

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thirty-three years old with a very limited, non-violent criminal history. On May 13, 2019, after spending 185 days in presentence detainment for all five cases, Vaden pled no contest to all nineteen counts across the four cases, and five of the six counts in the instant case. In exchange, Count 1 in the instant case, attempted promoting a dangerous drug in the first degree, was dismissed with prejudice. On May 13, 2019, Vaden was sentenced to four years of probation in each of the five cases, with all terms to run concurrently. The circuit court sentenced Vaden to terms of imprisonment as conditions of probation in all five cases ranging from six months to eighteen months.

On June 5, 2019, Vaden was admitted into the Maui Drug Court program ("MDC Program"): Vaden's prior sentence was

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2CPC-18-0000413:

- Count 1: Promoting a Dangerous Drug in the Third Degree
- Count 2: Prohibited Acts related to Drug Paraphernalia
- Count 3: Inattention to Driving

2CPC-18-0000457:

- Count 1: Promoting a Dangerous Drug in the Third Degree.

2CPC-18-0000844:

- Count 1: Attempted Promoting a Dangerous Drug in the First Degree;
- Count 2: Promoting a Dangerous Drug in the Second Degree;
- Count 3: Promoting a Dangerous Drug in the Third Degree;
- Count 4: Promoting a Harmful Drug in the Third Degree;
- Count 5: Promoting a Detrimental Drug in the Second Degree; and
- Count 6: Prohibited Acts Related to Drug Paraphernalia.

revoked, and Vaden was re-sentenced anew to four years of probation with the condition that he complete the MDC program. Vaden remained in custody, and on July 18, 2019 Vaden was ordered to be released from custody on July 22, 2019, with orders to meet with the drug court office immediately upon release. On July 22, 2019, Vaden reported to the MDC Program accompanied by his mother. Vaden remained in the MDC Program for approximately four-and-a-half months until being taken back into custody on December 5, 2019, for violating the program's rules. Vaden remained in custody and on January 21, 2020, Vaden (1) was terminated from the MDC Program; (2) his probation was revoked for failure to complete the MDC Program, and (3) his bail was set at $375,000.00. Vaden remained in custody and on February 28, 2020 Vaden was resentenced to a total of five years incarceration in the four cases, to run concurrently, and ten years incarceration in the instant case, to run consecutively to the five-year sentences, for a total fifteen-year consecutive sentence. See Majority at 4.[8] On May 1, 2020, Vaden filed a

[8] Vaden's conduct that underlies each individual count, for which a sentence of imprisonment is authorized, "constitutes a crime." HRS § 701-107(1) ("An offense defined by this Code or by any other statute of this State for which a sentence of imprisonment is authorized constitutes a crime."). As the Majority notes, Vaden ultimately received the following sentences for each count/crime:

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Motion to Correct and Clarify Order of Resentencing. Vaden's motion set forth the periods of time during which he served 340 days in custody before being resentenced to prison on February 28, 2020: (i) November 9, 2018 to July 22, 2019 (255 days); (ii) December 5, 2019 to February 28, 2020 (85 days). Vaden moved the court to apply his 340 days of credit against both the five-year sentence and the ten-year sentence, so that each sentence

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Case	Counts	New Sentences
2CPC-18-0000315	Ct. 1-11 Ct. 12,13 Ct. 14	**5 years in each count** 1 year in each count 30 days
2CPC-18-0000348		5 years
2CPC-18-0000413	Ct. 1 Ct. 3	5 years 30 days
2CPC-18-0000457		5 years
2CPC-18-0000844 (This case)	Ct. 2 (PDD2) Ct. 3,4 Ct. 5	**10 years** 5 years in each count 1 year

The circuit court ordered the sentences in the first four cases to run concurrently with each other, resulting in the aggregate of four, five-year concurrent terms (the five-year sentence). The circuit court ordered the sentences for each count in the instant case to run concurrently with each other, for an aggregate of ten years (the ten-year sentence). However, the circuit court ordered Vaden's ten-year sentence to run consecutively with his five-year sentence.

For simplicity, this dissent will refer to the total term of imprisonment in each of the five, individual, cases as the "sentence" for the five unrelated "crimes" committed by Vaden. In other words, the dissent will refer to the ten-year sentence as being based on a single crime (specifically, the conduct that underlies count 2 of the instant case), and each of the five-year sentences as being based on a single crime (the conduct that underlies count 1 in each of those four cases). For accuracy, however, it is important to note that Vaden committed more than five "crimes," as the technical definition of crime in HRS § 701-107(1) refers to the conduct that underlies each individual count. Because the sentences imposed in each individual case are to run concurrently with each other, however, the dissent will look to the longest term of imprisonment in each of the five cases (the ten-year sentence, and the four, five-year sentences).

would be reduced by the 340 days. The circuit court denied his motion, concluding that the Department of Public Safety ("DPS") was correct to apply Vaden's 340 days of credit to the five-year sentence and not the ten-year sentence. The ICA affirmed, relying on State v. Tauiliili, 96 Hawai'i 195, 29 P.3d 914 (2001) to hold that the circuit court correctly applied Vaden's 340-day credit only once against the aggregate of his consecutive sentences. Accordingly, his total to be served for his consecutive sentence was fourteen years and twenty-five days, rather than thirteen years and fifty days.

III. Pursuant to the plain language of HRS § 706-671(1), Vaden's presentence detention time should be deducted from each of the five-year and ten-year sentences that constitute his aggregate fifteen-year consecutive sentence

Vaden served presentence detention time simultaneously for each of the crimes for which his five-year and ten-year consecutive sentences are based. As such, Vaden's presentence detention time should be deducted from both his five-year sentence and his ten-year sentence, rather than only once from their aggregate. HRS § 706-671(1).

A. The plain language of HRS § 706-671(1) requires that presentence detention time served for a crime be credited against a sentence imposed for the same crime

The language of HRS § 706-671(1) plainly applies credit for presentence detention time, served simultaneously for multiple alleged crimes, against each sentence, regardless of

whether that sentence is to be served consecutively or concurrently with other sentences. The text of HRS § 706-671(1) provides that a defendant gets credit for any period of detention served for a crime prior to a prison sentence imposed for that same crime, in relevant part:

> When a defendant who is sentenced to imprisonment has previously been detained in any State or local correctional or other institution following the defendant's arrest for the crime for which sentence is imposed, such period of detention following the defendant's arrest shall be deducted from the minimum and maximum terms of such sentence.

(emphases added).

When Vaden was being detained presentence from November 9, 2018 to May 13, 2019, and after his probation from January 21, 2020 to February 28, 2020, he was not incarcerated for only his five-year sentence. He was being held for offenses that ultimately constituted a five-year sentence for each of the following counts across the four cases: (1) 2CPC-18-315, counts one through eleven; (2) 2CPC-18-348, count one; (3) 2CPC-18-413, count one; and (4) 2CPC-18-457, count one. In addition, Vaden was being incarcerated for offenses that ultimately constituted a ten-year sentence for count two in the instance case. It is unequivocal that 706-671(1) mandates Vaden be given credit for both the five-year and ten-year sentences for which he was ultimately sentenced.

The plain language of a statute is "the fundamental starting point of statutory interpretation." State v. Demello,

136 Hawai'i 193, 195, 361 P.3d 420, 422 (2015) (quoting State v. Wheeler, 121 Hawai'i 383, 390, 219 P.3d 1170, 1177 (2009) (internal quotations omitted)). "Courts are bound, if rational and practicable, to give effect to all parts of a statute and no clause, sentence or word shall be construed as superfluous, void or insignificant if construction can be legitimately found which will give force to and preserve all words of the statute." Id. (quoting Dawes v. First Ins. Co. of Hawaii, 77 Hawai'i 117, 135, 883 P.2d 38, 56 (1994) (citation omitted)). Additionally, "this court must presume that the legislature meant what it said and is further barred from rejecting otherwise unambiguous statutory language." Id. (quoting Morgan v. Planning Dep't, Cnty. of Kauai, 104 Hawai'i 173, 185, 86 P.3d 982, 994 (2004) (quoting Sato v. Tawata, 79 Hawai'i 14, 23, 897 P.2d 941, 950 (1995) (Ramil, J., dissenting))). Specifically, where "the literal application of the language would not produce an absurd or unjust result, clearly inconsistent with the purposes and policies of the statute, there is no room for judicial construction and interpretation, and the statute must be given effect according to its plain and obvious meaning." State v. Palama, 62 Haw. 159, 161, 612 P.2d 1168, 1170 (1980) (brackets in original, citation omitted, emphases added).

The statute's plain language sets forth one precondition to applying credit against a sentence: credit is applied when the defendant was previously detained, pre-sentencing, "for the crime for which [the] sentence is imposed." HRS § 706-671(1). (emphasis added). In other words, the statute specifically conditions credit for presentence detention time on the fact that the presentence detention time was served for the same crime for which the defendant is later convicted of and sentenced for. See State v. Owens, 158 Idaho 1, 4, 343 P.3d 30, 33 (2015)("as long as the defendant's [presentence] jail time was for 'the offense' the defendant was convicted of and sentenced for, the court gives the defendant that credit.").[9] Credit must be given for presentence detention against each "sentence" because the statute's plain language states that the "period of detention following the defendants arrest shall be deducted from the minimum and maximum terms of such sentence." (emphasis added). See id. Here, the maximum terms of each sentence in the four cases is five years, and the maximum term of the sentence in the instant case is ten years.

[9] The use of the singular "crime" and sentence" in the phrase "for the crime for which sentence is imposed" in HRS § 706-671(1) does not mean that a defendant gets credit only once for presentence detention time served simultaneously in relation to multiple crimes. Rather, the use of the singular indicates that the presentence detention time must be served for the same crime for which the defendant is later convicted of and sentenced for.

Importantly, the statute's use of the word "sentence" in the singular makes no distinction between concurrent and consecutive sentences. HRS § 706-671(1). Irrespective of the type of sentence that is ultimately imposed, the statute plainly mandates that the defendant's presentence detention time "shall" be deducted from the "minimum and maximum terms of such sentence[.]" HRS § 706-671(1). The "literal application of the language" of HRS § 706-671(1), which calls for credit to be given whenever the defendant serves presentence detention time for a crime for which they are later sentenced, does not "produce an absurd or unjust result, clearly inconsistent with the purposes and policies of the statute[.]" Palama, 62 Haw. at 161, 612 P.2d at 1170 (emphases added).[10]

[10] As an example, consider a defendant charged with committing separate crimes X, Y, and Z, who is detained for one year from arrest until sentencing. The defendant is subsequently sentenced to five years imprisonment for X, five years imprisonment for Y, and five years imprisonment for Z. The five-year terms for X and Y are to run concurrently. The five-year term for Z is to run consecutively with the five-year concurrent terms for X and Y. Because the defendant's one-year presentence detention time was served for X, Y, and Z individually, that time "shall be deducted from the minimum and maximum terms of such sentence" for X, Y, and Z, individually. HRS § 706-671(1). This means that the defendant's five-year term for X is credited with the one year of presentence detention time served for X, and the defendant serves four years for crime X. The defendant's five-year term for Y is credited with the one-year of presentence detention time served for Y, and the defendant serves four years for crime Y. The defendant's five-year term for Z is credited with the one-year presentence detention time served for Z, and the defendant serves four years for crime Z.

Whether the sentences for X, Y, and Z are imposed concurrently or consecutively does not factor into the analysis, pursuant to the plain language of HRS § 706-671(1). In this hypothetical scenario, the defendant would serve four years concurrently for crimes X and Y, and an additional

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Thus, Vaden's presentence detention time, served simultaneously for the crimes for which his five-year and ten-year consecutive sentences are based, should be deducted from the minimum and maximum terms of both his five-year sentence and his ten-year sentence, rather than only once from their aggregate. HRS § 706-671(1).

The Majority incorrectly concludes that HRS § 706-671(1) permits Vaden to deduct his presentence detention time only once against the aggregate fifteen years of his five-year and ten-year consecutive sentence terms. The Majority interprets HRS § 706-761(1) to mean that presentence detention time credit shall be granted only once against the aggregate of a defendant's consecutive sentences. Respectfully, the language

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four years for crime Z, for a total of eight years. It is not "absurd or unjust" to reduce a defendant's total sentence from ten years to eight years, for the defendant having served one year of presentence detention time. Palama, 62 Haw. at 161, 612 P.2d at 1170. This is because that one-year presentence detention time was served "for [each] crime for which [each] sentence is imposed." HRS § 706-671(1). Indeed, this is how the statute's plain language requires calculation of credit for time served.

It is the failure to apply the statute's plain language that produces an unjust result in this case: the consequence of the majority's affirmance of Tauiliili as "good law" leads to an indigent defendant, who could not make bail on any charge (X, Y, or Z), getting credit on only two charges (X and Y), "ipso facto resulting in [the defendant's] indigency causing him to do [one year] more time than he should be doing if the statute were applied to each charge as is its plainly worded intent." State v. Hoch, 102 Idaho 351, 354, 630 P.2d 143, 146 (Idaho 1981) (J., Bistline, dissenting)(overruled by State v. Owens, 158 Idaho, 1, 343 P.3d 30 (Idaho 2015)).

required to reach this result is ringingly absent from the statute's plain terms.

The Majority does not rely upon the plain text of HRS § 706-671(1) to reach its result; instead, the Majority relies on Tauiliili, 96 Hawai'i 195, 29 P.3d 914 (2001), which erroneously interpreted HRS § 706-671(1) to preclude the deduction of presentence incarceration time from each sentence when consecutive terms are imposed. Tauiliili was wrongly reasoned and should be overturned.

B. Tauiliili erroneously read an exception into HRS § 706-671(1) for consecutive sentences and should be overturned

Tauiliili assumed an ambiguity in HRS § 706-671(1) that does not exist. Rather than analyze the plain statutory text mandating credit for the "period of detention" that a defendant serves following "arrest for the crime for which sentence is imposed," the Tauiliili court (i) looked to the commentary to HRS § 706-671 to attempt to discern the legislature's intent and (ii) looked to out-of-state cases, which interpreted statutes with dissimilar language or which have been subsequently overruled. Id. The Tauiliili court offered no analysis of the statutory text of HRS § 706-671(1) in holding that "when consecutive sentences are imposed, credit for presentence imprisonment is properly granted against only the aggregate of the consecutive sentence terms." Tauiliili, 96

Hawai'i at 199, 29 P.3d at 918. Because the Tauiliili court's interpretation of HRS § 706-671(1) was not required to prevent "the literal application of the language [from] produc[ing] an absurd or unjust result," the holding of Tauiliili is fundamentally flawed. Palama, 62 Haw. at 161, 612 P.2d at 1170. Given that Tauiliili was wrong in its interpretation of HRS § 706-671(1), there is a compelling justification to overrule it. See, e.g., Ahn v. Liberty Mut. Fire Ins. Co., 126 Hawai'i 1, 10, 265 P.3d 470, 479 (2011).[11]

Rather than beginning with the plain language of the statute to resolve the question of how to apply presentence incarceration time against consecutive sentences, Tauiliili referred to the "commentary to HRS § 706-671," which states that the statute "provides for some equalization . . . between those defendants who obtain pre-sentence release and those who do not[.]" Tauiliili, 96 Hawai'i at 199, 29 P.3d at 918. The Tauiliili court reasoned that statutes which give credit for

[11] A court should not "depart from the doctrine of stare decisis without some compelling justification." State v. Garcia, 96 Hawai'i 200, 206, 29 P.3d 919, 925 (2001) (quoting Hilton v. South Carolina Pub. Rys. Comm'n, 502 U.S. 197, 202, 112 S. Ct. 560, 116 L. Ed. 2d 560 (1991)). However, "this court has long recognized, we not only have the right but are entrusted with a duty to examine the former decisions of this court and, when reconciliation is impossible, to discard our former errors[.]" State v. Brantley, 99 Hawai'i 463, 465, 56 P.3d 1252, 1254 (2002) (overruling State v. Jumila, 87 Hawai'i 1, 950 P.2d 1201 (1998)). The doctrine of stare decisis does not compel this court to follow Tauiliili's "manifestly wrong" and "unjust [and] unwise" reasoning. State v. Grant, 154 Idaho 281, 287, 297 P.3d 244, 250 (Idaho 2013).

presentence confinement are designed "to place an in-custody criminal defendant who cannot afford to post bail in the same position as his counterpart with bail money." Id. (citing Nissel v. Pearce, 307 Ore. 102, 764 P.2d 224, 226 (Or. 1988)). The Tauiliili court concluded that this means that a defendant is entitled to deduct presentence detention time only once against the aggregate of subsequent consecutive sentences. Id.

Tauiliili over-relied on and misinterpreted the commentary to HRS § 706-671 to determine the legislature's intent, and overstated the equalization rationale. Commentaries are explicitly "not [to be used] as evidence of legislative intent." Title 37, Hawai'i Penal Code § Commentaries. Moreover, even if commentaries are helpful in statutory interpretation, the Tauiliili court misinterpreted the commentary to HRS § 706-671. The commentary states that the goal of the statute is to provide "some equalization . . . between those defendants who obtain presentence release and those who do not." Tauiliili, 96 Hawai'i at 199, 29 P.3d at 918 (citing commentary to HRS § 706-671). Instead of looking to the legislature's intent to provide "some equalization," the Tauiliili court interpreted the commentary to require total equalization under any circumstances.

Contrary to legislative intent, Tauiliili misinterpreted HRS § 706-671(1) to favor defendants who can

afford to post bail. Tauiliili stated that allowing the deduction of pre-sentence detention time from each of the sentences comprising a consecutive sentence imposed would put defendants who did not obtain pre-sentence release in a better position than those who did. Tauiliili, 96 Hawai'i at 199, 29 P.3d at 918. However, Tauiliili ignored the fact that in advancing the goal of equalization, and in passing HRS § 706-671, the legislature intended that indigent defendants who cannot afford to post bail are not penalized for that reason. Hse. Stand. Comm. Rep. No. 720, in 1989 House Journal, at 1093 ("The purpose of this bill is to allow the courts to bestow presentence credit for defendants . . . who have been detained in a correctional or other institution following arrest for the crime for which sentence is imposed.") (emphasis added); Sen. Stand. Comm. Rep. No. 1342, in 1989 Senate Journal, at 1309 ("The purpose of this bill is to require that the courts grant credit for defendants . . . who have been detained in a correctional or other institution following arrest for the crime for which sentence is imposed.") (emphases added). In other words, the legislative focus was to benefit defendants who are in custody prior to the imposition of their sentences, not to benefit defendants who obtain pre-sentence release by posting bail. Rather than ensuring that indigent defendants are not penalized, the Tauiliili court sought to ensure equalization

under any circumstances, by reading in an exception for consecutive sentences that penalizes the poor and is found nowhere in the statutory text.

Beyond looking to the commentary to HRS § 706-671, the Tauiliili court relied on inapposite and reversed out-of-state case law. For example, the Tauiliili court cited to Endell v. Johnson, 738 P.2d 769, 771 (Alaska App. 1987), to support the proposition that "[c]ourts in other jurisdictions having similar statutes agree that a defendant who receives consecutive sentences is entitled to a presentence credit only once against the aggregate of the consecutive terms[.]" Tauiliili, 96 Hawai'i at 199, 29 P.3d at 918. However, Alaska Statute ("AS") § 12.55.025(c),[12] which was at issue in Endell v. Johnson, explicitly provides that "[a] defendant may not receive credit for more than the actual time spent in custody pending trial, sentencing, or appeal." (emphasis added). There is no such

[12] AS 12.55.025(c)(2000) provides:

> Except as provided in (d) and (e) of this section, when a defendant is sentenced to imprisonment, the term of confinement commences on the date of imposition of sentence . . . . A defendant shall receive credit for time spent in custody pending trial, sentencing, or appeal, if the detention was in connection with the offense for which sentence was imposed. A defendant may not receive credit for more than the actual time spent in custody pending trial, sentencing, or appeal. The time during which a defendant is voluntarily absent from official detention after the defendant has been sentenced may not be credited toward service of the sentence.

requirement in HRS § 706-671(1) that caps the amount of pre-sentence incarceration credit that a defendant is entitled to at the "actual time spent in custody."[13]

The Tauiliili court also relied upon State v. Hoch, 102 Idaho 351, 630 P.2d 143 (1981) to support its holding, but Hoch was later overturned by the Idaho Supreme Court in State v. Owens, 158 Idaho 1, 343 P.3d 30 (2015). In Hoch, the Idaho Supreme Court held that the purpose of Idaho Code ("I.C.") § 18-309[14] "is clearly to give a person convicted of a crime credit for such time as he may have served prior to the actual sentencing upon conviction." Hoch, 102 Idaho at 144, 630 P.2d at 144. The Hoch court thus affirmed the trial court's order,

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[13] Similarly, the Tauiliili court relied upon State v. Cuen, 158 Arizona 86, 761 P.2d 160 (1988) to support its interpretation of HRS § 706-671(1). However, the plain language of the Arizona statute at issue in Cuen is distinguishable from the plain language of HRS § 706-671(1). Arizona Revised Statutes ("A.R.S.") § 13-709(B) provides: "All time actually spent in custody pursuant to an offense until the prisoner is sentenced to imprisonment for such offense shall be credited against the term of imprisonment otherwise provided for by this chapter." (emphasis added). Whereas HRS § 706-671(1) makes no mention of the time "actually spent in custody[.]"

[14] I.C. § 18-309 provides, in relevant part:

> In computing the term of imprisonment, the person against whom the judgment was entered, shall receive credit for any period of incarceration prior to entry of judgment, if such incarceration was for the offense or an included offense for which the judgment was entered. The remainder of the term commences upon the pronouncement of sentence and if thereafter, during such term, the defendant by any legal means is temporarily released from such imprisonment and subsequently returned thereto, the time during which he was at large must not be computed as part of such term.

which deducted the defendant's 383 days spent in presentence detainment only once from his aggregate sentence of two, consecutive five-year terms. Id. Yet, Hoch is no longer valid authority pursuant to State v. Owens, 158 Idaho 1, 343 P.3d 30 (2015), which now requires presentence credit to be deducted from each term of imprisonment comprising the consecutive sentences.

The Idaho Supreme Court recognized that the "reasoning in Hoch incorrectly looked at legislative intent when" the plain language of I.C. § 18-309 "is unambiguous[.]" Owens, 157 Idaho at 5, 343 P.3d at 34. The Owens court thus held that I.C. § 18-309 requires presentence credit to be deducted from each term of imprisonment in consecutive sentences, concluding that the plain language of the statute "unambiguously requires courts to credit a defendant any prejudgment incarceration served on each count." Id. at 6, 343 P.3d at 35. Like Hoch, this court in Tauiliili incorrectly interpreted legislative intent and failed to analyze the plain language of HRS § 706-671(1).[15,16] Accordingly,

[15] Like Hoch, the other out-of-state cases upon which Tauiliili relied failed to analyze the plain language of the statutes at issue. See State v. Miranda, 108 N.M. 789, 792-93 (N.M. Ct. App. 1989); see also Nissel v. Perce, 307 Ore. 102, 106-08, 764 P.2d 224, 226-29 (1988).

[16] New York has also held that presentence incarceration time should be deducted from each subsequent sentence, rather than the aggregate of consecutive sentences. People v. Malcolm, 44 N.Y.2d 875, 379 N.E.2d 156, 407 N.Y.S.2d 628 (1978).

Tauiliili should be overturned, and Hawai'i, like Idaho, should follow the plain language of its statute providing for credit for time spent in presentence detainment.

C. The rule of lenity supports the conclusion that HRS § 706-761(1) does not prohibit presentence detention credit for each component sentence when consecutive sentences are imposed

Pursuant to the rule of lenity, any ambiguity with respect to whether presentence detention time should be deducted from each sentence comprising a consecutive term of incarceration, or only once against the aggregate of consecutive terms, weighs in favor of crediting Vaden for time served for both sentences comprising his consecutive term. As discussed supra in section III.B, the plain text of HRS § 701-671(1) is unambiguous. Yet, Tauiliili sought to interpret HRS § 706-671(1) as though it were ambiguous, stating that "[i]n construing an ambiguous statute, 'the meaning of the ambiguous words may be sought by examining the context,'" and that "the courts may resort to extrinsic aids in determining legislative intent," including looking to "legislative history as an interpretive tool." Tauiliili, 96 Hawai'i at 197, 29 P.3d at 916. Assuming arguendo that HRS § 706-671(1) is ambiguous as to whether presentence detention time should be deducted from each sentence comprising a consecutive term of incarceration, the

rule of lenity counsels against creating a judicially-imposed exception for consecutive sentences.

The rule of lenity states that "[w]here a criminal statute is ambiguous . . . the statute must be strictly construed against the government and in favor of the accused." State v. Shimabukuro, 100 Hawai'i 324, 327, 60 P.3d 274, 277 (2002) (citations omitted). Thus, pursuant to the rule of lenity, if HRS § 706-671(1) is indeed ambiguous as to whether presentence imprisonment is to be credited against each sentence imposed, whether concurrent or consecutive, it should be strictly construed in favor of the accused. Contrary to the rule of lenity, the Majority undermines a defendant's right to obtain credit for presentence detention time by concluding that when a defendant is sentenced to consecutive terms of imprisonment, the defendant only receives presentence credit once against the aggregate of the consecutive terms. Construing HRS § 706-671(1) to provide credit for presentence detention time against each of the sentences comprising a defendant's consecutive sentence would correctly interpret the statute "in favor of the accused" and thus not run contrary to the rule of lenity.[17]

[17] The rule of lenity has been repeatedly relied upon by this court in interpreting ambiguous criminal statutes. State v. Shimabukuro, 100 at

continued . . .

D. Applying the plain language of HRS § 706-671(1), Vaden's presentence detention time should be deducted from both his five-year and ten-year sentences

For all the reasons set forth above, Vaden's presentence detention time should be deducted from both the five-year and ten-year sentences that comprise his fifteen-year consecutive sentence. Prior to his original May 13, 2019 sentence of probation, Vaden spent 185 days in jail, from November 9, 2018 to May 13, 2019, based upon his arrest for the alleged crimes he committed in all five cases.[18] He was sentenced in all five cases to four years of probation with terms of imprisonment ranging from six months to eighteen months as conditions of probation. Vaden remained in custody and twenty-three days later was resentenced on June 5, 2019 to four years of probation and was required to complete the MDC Program. Vaden remained in custody for another forty-seven days until he

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. . . continued

327, 60 P.3d at 277; State v. Kaakimaka, 84 Hawai'i 280, 292, 933 P.2d 617, 629 (1997) ("we are required to construe a sentencing provision in favor of the defendant."); State v. Bright, 147 Hawai'i 164, 166 465 P.3d 611, 613 (2020) ("The rule of lenity requires any ambiguous terms to be construed in favor of the defendant."); State v. Guyton, 135 Hawai'i 372, 380-81, 351 P.3d 1138, 1146-47 (2015).

[18] The Majority concedes that because DPS did not give the court the required certificates of detention detailing the days Vaden was detained prior to sentencing, and in connection with his probation sentences, the record is unclear as to how many of the 340 days were accrued (1) prior to sentencing; (2) in connection with his probation sentence before he was admitted to drug court; and (3) after he was terminated from the MDC program and before he was given his consecutive sentence.

was released on July 22, 2019 to commence the MDC Program. He served approximately 136 days in compliance with the program before being remanded into custody on December 5, 2019. Vaden remained in custody from December 5, 2019 until being resentenced to a fifteen-year consecutive term of incarceration for the offenses in all five cases on February 28, 2020. By the time he received the consecutive term sentence Vaden had served a total of 340 days of incarceration: 255 days from November 9, 2018 to July 22, 2019, and 85 days from December 5, 2019 to February 28, 2020.

Accordingly, the 340 days Vaden spent in jail following his "arrest[s] for the crime[s] for which [the] sentence[s] [are] imposed . . . shall be deducted from the minimum and maximum terms of such sentence[s]." HRS § 706-671(1). This means that the 340 days Vaden spent in custody prior to being sentenced must be deducted from each of his concurrent five-year sentences, as well as his ten-year sentence. DPS credited Vaden with 340 days against his concurrent five-year sentences, but not his ten-year sentence. The failure to deduct 340 days credit from Vaden's ten-year sentence means Vaden will serve a total of 14 years and 25 days, which is 340 days longer than his legal sentence of 13 years and 50 days.

IV. Pursuant to HRS § 706-671(2), Vaden's probation incarceration time should be deducted from each sentence composing his consecutive sentence

The Majority holds that probation incarceration time should be deducted only once from the aggregate of subsequent consecutive sentences. The Majority's holding is contrary to the plain language of HRS § 706-671(2) and this court's correct interpretation of the statute in State v. Thompson, 147 Hawai'i 1, 464 P.3d 286 (2020) WL 2846618 (SDO). Incarceration imposed as a condition of probation[19] is to be deducted from each component sentence of a subsequently imposed consecutive term of imprisonment, such as Vaden's five-year and ten-year terms.

A. The plain language of HRS § 706-671(2) requires that time served under a vacated sentence be credited against a new sentence for the same crime

Following Vaden's May 13, 2019 guilty plea for separate crimes across the five cases, Vaden served seventy days in custody on probation before being released on July 22, 2019 to commence the MDC Program. Vaden served an additional forty-

[19] Vaden's probation incarceration time refers to the 117 days Vaden served while on probation before his probation was revoked, and the 38 days he was incarcerated awaiting resentencing for the same crimes. This probation incarceration time is distinct from Vaden's presentence incarceration time, which is governed by HRS § 706-671(1). See supra note 21 for explanation regarding the record's lack of clarity with respect to how Vaden's 340 days of credit were accrued (1) prior to sentencing (presentence incarceration time); (2) in connection with his probation sentence before he was admitted to drug court (probation incarceration time); and (3) after he was terminated from drug court and probation was revoked, prior to receiving his consecutive sentence.

eight days in custody on probation after being remanded into custody on December 5, 2019, and before having his probation revoked on January 21, 2020. Vaden remained in custody from January 21, 2020 until being resentenced for the same separate crimes across the five cases to a fifteen-year consecutive term on February 28, 2020. The language of HRS § 706-671(2) plainly requires that time served under a vacated sentence be credited against a new sentence for the same crime, "When a judgment of conviction or a sentence is vacated and a new sentence is thereafter imposed upon the defendant for the same crime, the period of detention and imprisonment theretofore served shall be deducted from the minimum and maximum terms of the new sentence." HRS § 706-671(2) (emphasis added).

As previously noted, there is only one precondition to providing credit for time served on a vacated sentence: that the vacated sentence be for "the same crime" for which the new sentence is imposed. HRS § 706-671(2). Courts do not have discretion in applying this credit for time served under a vacated sentence against a "new sentence" imposed for "the same crime" (the same count for which the vacated sentence was imposed) because the statute's plain language states that the time "shall be deducted from the minimum and maximum terms of

the new sentence." HRS § 706-671(2)(emphasis added).[20] The maximum terms for the new sentences at issue in Vaden's case are five-year terms in the four cases, and a ten-year term in the instant case (with minimum terms to be determined by the Hawai'i Paroling Authority).

This court applied HRS § 706-671(2) in State v. Thompson, 147 Hawai'i 1, 464 P.2d 286, 2020 WL 2846618 (2020)(SDO) to credit the defendant with time served against each sentence comprising consecutive terms: "[w]hen the defendant has accrued time served against multiple crimes, the wording of HRS § 706-671(2) suggests that on resentencing for those same crimes, the defendant is entitled to credit against each of those same crimes, rather than only once against the aggregate of the consecutive sentences." State v. Thompson, 147

[20] The use of the singular "sentence" in HRS § 706-671(2) ("[w]hen a . . . sentence is vacated and a new sentence is thereafter imposed upon the defendant for the same crime, the period of detention . . . theretofore served shall be deducted[.]") does not mean that time served simultaneously under vacated sentences for multiple crimes gets deducted only once from the aggregate of subsequent consecutive sentences. The Majority states that "[t]he statute's use of the singular 'sentence' reflects the fact that the word may refer to . . . the sum of the terms of incarceration and other penalties imposed on a defendant for their crimes." There is no indication in the statutory text or legislative history that the use of the singular 'sentence' was meant to refer to the "sum of the terms of incarceration . . . imposed on a defendant." (emphasis added) Rather, the Majority's assertion ignores the language in the statute that in order for credit to be given, the new sentence imposed must be for "the same crime" for which the vacated sentence was imposed. See Thompson, 2020 WL 2846618 at *2 ("[I]t is significant that the statute requires that the defendant be credited with time served with respect to the 'same crime.'") (internal citations omitted).

Hawai'i 1, 464 P.2d 286, 2020 WL 2846618 at *2 (2020)(SDO). In Thompson, after a successful habeas corpus petition, Thompson's nine concurrent life sentences were vacated. Id. at *1.[21] The circuit court then resentenced Thompson to three twenty-year terms and a single one-year term, to run consecutively. Id. At the time of resentencing, Thompson had concurrently served seventeen years on his vacated sentences. Id. The circuit court indicated that this credit would be applied only once to the aggregate sentence of sixty-one years. Id. This court disagreed in a summary disposition order. Id. at *3. It held that the time served under the vacated sentences "must be credited against the statutory maximum term for each count under which he was resentenced." Id. (emphasis added). Emphasizing the plain language of the statute, this court explained that "[w]hen the defendant has accrued time served against multiple crimes . . . the defendant is entitled to credit against each of those same crimes, rather than only once against the aggregate of the consecutive sentences." Id. at *2. (emphasis added).

[21] Thompson's habeas corpus petition was successful because "the nine consecutive life sentences underlying his sentence were extended beyond the statutory maximum based on facts found by a judge, not a jury, in violation of in violation of the United States Supreme Court's holding in Apprendi v. New Jersey, 530 U.S. 466 (2000)." Thompson, 2020 WL 2846618 at *1.

Thus, the Thompson court gave effect to the plain terms in HRS § 706-671(2) "for the same crime" and "new sentence" to specifically grant Thompson credit for time served against each count for which he received his consecutive sentences. In so doing, the Thompson court declined to limit Thompson's credit to apply only once against the aggregate of his consecutive sentences. Thompson cited the plain language of HRS § 706-671(2) to mandate credit for time served against each new sentence. The Majority in effect overrules Thompson by failing to give effect to the plain statutory terms of HRS § 706-671(2); it applies credit only once against the aggregate of consecutive sentences, with no analysis distinguishing Thompson. The Majority's interpretation is without merit, as it renders the operative statutory language "new sentence" imposed for "the same crime" "superfluous, void, [and] insignificant[.]" State v. Wallace, 71 Haw. 591, 594, 801 P.2d 27, 29 (1990) (it is a "cardinal rule of statutory construction that courts are bound, if rational and practicable, to give effect to all parts of a statute" and that "no clause, sentence or word shall be construed as superfluous, void, or insignificant if a

construction can be legitimately found which will give force to and preserve all words of the statute.")[22]

According to the plain terms of HRS § 706-671(2), and pursuant to this court's reasoning in Thompson, Vaden's probation incarceration time must be deducted from each of the five-year and ten-year sentences comprising his consecutive sentence. Vaden was initially sentenced to five concurrent terms of four years of probation for separate crimes across the five cases.[23] Vaden served probation incarceration from May 13, 2019 until July 22, 2019, and again from December 5, 2019 until January 21, 2020, for a total of 118 days. Vaden's probation was revoked on January 21, 2020 and he remained in custody until being resentenced on February 28, 2020 to five-year and ten-year terms for those same separate crimes across the five cases. Because Vaden's new sentences were imposed for the same crimes under which he accrued probation incarceration time, Vaden is

[22] Tauiliili should not be persuasive in the interpretation of the text of HRS § 706-671(2) because Tauiliili was erroneously reasoned. The Majority asserts that Tauiliili's "implicit interpretation of the word 'sentence' in HRS § 706-671(1) . . . as referring to the aggregate of consecutive sentences imposed in connection with the defendant's crimes, not a particular term of imprisonment imposed in connection with a specific crime" is "persuasive." (emphases added) However, Tauiliili offered no analysis of the statutory text in HRS § 706-671(1).

[23] See supra section II.

entitled to deduct credit from each new sentence for all probation time previously served for each crime.

B. Giving effect to the plain language of HRS § 706-671(2) would not produce "unfair and arbitrary results"

The Majority argues that interpreting HRS § 706-671(2) to require that probation incarceration time be applied against each consecutive sentence imposed after the revocation of probation would lead to unfair and arbitrary results. The Majority cites Tauiliili for the proposition that applying probation incarceration time to each sentence comprising a consecutive sentence would "defeat the legislative purpose underlying consecutive sentencing" because "the more consecutive sentences a criminal defendant received, the more credit he [or she] would accrue for presentence imprisonment[.]" Because the Tauiliili court did not attempt to interpret the language of HRS § 706-671(2), and because Tauiliili did not address the issue of how to apply credit for probation incarceration time, Tauiliili is inapposite and the Majority's position is without merit. As set forth supra, Thompson held that "[w]hen the defendant has accrued time served against multiple crimes, the wording of HRS § 706-671(2) suggests that on resentencing for those same crimes, the defendant is entitled to credit against each of those same crimes, rather than only once against the aggregate of the consecutive sentences." Thompson, 147 Hawai'i 1, 464 P.2d

286, 2020 WL 2846618 at *2 (2020)(SDO). (emphases added). While the Majority argues that interpreting HRS § 706-671(2) to credit each sentence comprising a consecutive term this way produces unfair and arbitrary results, the Thompson court found that this interpretation was required to avoid unjust results. Specifically, Thompson reasoned that failure to apply probation incarceration credit to each of Thompson's sentences comprising his consecutive sentence would subject Thompson to "unconstitutional 'multiple punishments' for the same offense." Id. at *3. For these reasons, giving effect to the plain language of HRS § 706-671(2) and applying credit for probation incarceration time against each of Vaden's sentences comprising his consecutive term does not produce unfair or arbitrary results.

V. Depriving Vaden of Credit Contravenes Public Policy Intended to Reduce Hawaii's Incarcerated Population.

Contrary to legislative intent, the Majority increases the period of incarceration for all defendants receiving a consecutive sentence who have been held in custody prior to imposition of a consecutive sentence. By depriving all such defendants of credit for time served on each crime prior to trial and resentencing, the Majority extends their period of incarceration beyond the legal sentence. Interpreting HRS §§ 706-671(1) and 706-671(2) to prohibit Vaden from receiving

credit for time served for each of his crimes comprising his consecutive sentence thus contravenes legislative intent to reduce the State's incarcerated population. The legislature has carefully considered the severe economic and social impacts of overincarceration in Hawai'i. Pursuant to HRS § 353L-3(b), it has expressed the intent to reduce the population of incarcerated people in Hawai'i, especially the nonviolent who suffer from mental health issues and/or substance abuse disorders.

A. Overincarceration in the United States

On August 9, 2003, United State Supreme Court Justice Anthony M. Kennedy addressed with great concern the impacts of unnecessary overincarceration in the United States during an address to the American Bar Association ("ABA"). Anthony M. Kennedy, Associate Justice, Supreme Court of the United States, Speech at the American Bar Association Annual Meeting (August 9, 2003), (transcript available at https://www.supremecourt.gov/publicinfo/speeches/viewspeech/sp_08-09-03 (last visited Feb. 28, 2023). Justice Kennedy criticized the efficacy of criminal punishment that unnecessarily incarcerates people throughout the United States. Justice Kennedy criticized (1) the rate of incarceration in the United States, (2) the disproportionate impact of incarceration on minorities, (3) the costs and length of incarceration, and (4) the neglect of rehabilitation as a

punishment goal. Id. To address the injustice of overincarceration in the United States Justice Kennedy issued a clarion call to action, asking the ABA to take a leadership role in "help[ing] find more just solutions and more humane policies" for correctional systems:

> Out of sight, out of mind is an unacceptable excuse for a prison system that incarcerates over two million human beings in the United States. To that end, I hope it is not presumptuous of me to suggest that the American Bar Association should . . . . study these matters, and to help start a new public discussion about the prison system. It is the duty of the American people to begin that discussion at once.

Id. (emphasis added).

So began the ABA's campaign--affirmed by the state of Hawai'i[24]--to bring solutions to the crisis of overincarceration, and promote policies that would restore a rehabilitative purpose to corrections. Id.

In August of 2022, the ABA passed Resolution 604[25] which adopted the "ABA Ten Principles on Reducing Mass Incarceration" and "urge[d] federal, state, local, territorial, and tribal legislative and other governmental bodies to adopt

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[24] See infra section V.C for discussion on the HCR 85 Task Force Report, which cites multiple ABA policy reports and recommendations concerning overincarceration and the treatment of incarcerated individuals, including: American Bar Association, ABA Standards for Criminal Justice: Treatment of Prisoners, (3d ed. 2011).

[25] American Bar Association, Resolution 604 (Aug. 2022)("ABA Report"), available at https://www.americanbar.org/content/dam/aba/directories/policy/annual-2022/604-annual-2022.pdf (last visited Feb. 28, 2023).

policies consistent with the ABA Ten Principles on Reducing Mass Incarceration." The Resolution was accompanied by a report illustrating overincarceration's debilitating impact on individuals, families, and communities across the country, especially those comprised of Native and minority populations:

> Incarceration does not simply hurt the individual jailed. It devastates families and destabilizes communities. One of the most tragic aspects of mass incarceration is its disproportionate and devastating impact on people and communities of color across the United States. Over the last 50 years, the ill-fated War on Drugs, biased law enforcement, and overly harsh sentencing regimes have . . . significantly increase[d] the chances that individual Black, Latinx, and Native people will be ensnared by the criminal legal system.

ABA Report at 2.

Hawai‘i's own history with overincarceration verifies the ABA's findings, and illuminates the compelling nature of the legislatures' present-day efforts to reduce recidivism and the unnecessary cost of incarceration.

B. Overincarceration in Hawaiʻi

In 2010, the Office of Hawaiian Affairs ("OHA") published a landmark study demonstrating that Native Hawaiians are overrepresented at every stage of Hawaii's criminal justice system.[26] Native Hawaiians and part-Native Hawaiians make up

[26] HCR 85 Task Force, Creating Better Outcomes, Safer Communities: Final Report of the House Concurrent Resolution 85 Task Force on Prison Reform to the Hawai‘i Legislature 2019 Regular Session 1 (Dec. 2018) (hereinafter "HCR 85 Task Force Report"), available at https://www.courts.

continued . . .

approximately 21% of the general population, but 37% of the prison population.[27] From 1978 to 2016, Hawaii's population increased by 53%; however the increase in the number of Hawaii's people placed in jail cells increased exponentially faster than the rate of population growth. Hawaii's incarceration rate surged by 670%, with the number of incarcerated people increasing from 727 to 5,602.[28] The legislature's response to decades of overincarceration, which continues to disproportionally impact Native Hawaiians, has been the creation of a legal framework that requires the State to reduce its incarcerated population and "transition to a rehabilitative and therapeutic model" of corrections. HRS § 353L-3(b).[29]

. . . continued

state.hi.us/ wpcontent/uploads/2018/12/HCR-85_task_force_final_report.pdf, also available at https://perma.cc/YDH5-PM9W.

[27] Id.

[28] Id. at *1.

[29] The legislative history for HRS § 353L-3(b) includes the following testimony concerning the overrepresentation of Native Hawaiians in Hawaii's correctional system, and support for transitioning to a rehabilitative model of corrections:

> (1) "We look forward to continuing to represent the interests of overrepresented paʻahao in this important discussion; and we hope to work collaboratively with the Legislature, Administration, and Judiciary toward expeditious implementation of the recommendations of the Native Hawaiian Justice Task Force and the HCR 85 Task Force to transform our criminal justice system from a punitive model to a rehabilitative and therapeutic one."

Hearing on H.B. 1552 Before the H. Comm. On Judiciary, 30th Leg., Reg. Sess. (Haw.2019)(statement of the Office of Hawaiian Affairs).

continued . . .

C. The Hawai'i Legislature's Framework for Reducing Overincarceration and Reforming the Correctional System

In 2016, the legislature determined Hawai'i's correctional system would benefit from the implementation of "effective incarceration policies, programs, and best practices" that, inter alia, "alleviate inmate overcrowding at correctional facilities[.]" See House Concurrent Resolution No. 85, H.D. 2, S.D. 1 (2016). To that end, the legislature turned to the judiciary and requested that the Chief Justice establish a joint task force ("The HCR 85 Task Force") to "study effective incarceration policies in Hawaii and other jurisdictions, and suggest improvements for Hawaii's correctional system[.]" Id.

. . . continued

> (2) "The single most important recommendation of the HCR 85 Task Force is that Hawaii should transition from a punitive to a rehabilitative correctional system. The coordinator position described in HB 1152 would ensure that this transition takes place, and that it occurs in a timely and effective manner."

Hearing on H.B. 1552 Before the H. Comm. On Judiciary, 30th Leg., Reg. Sess. (Haw.2019)(statement of Robert K. Merce, vice chair, HCR 85 Task Force).

> (3) "We are always mindful that more than 1,600 of Hawai`i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands."

Hearing on H.B. 1552 Before the H. Comm. On Judiciary, 30th Leg., Reg. Sess. (Haw.2019)(statement of Kat Brady, Coordinator, Community Alliance on Prisons).

The HCR 85 Task Force convened and commenced its research in June of 2016.

The Task Force's final report to the legislature made key findings and recommendations for improving Hawaii's correctional system, concluding that the State should (1) "transition from a punitive to a rehabilitative correctional system[;]" (2) "adopt a comprehensive strategy to address the overrepresentation of Native Hawaiians in the correctional system[;]" and (3) "set numerical goals and a timetable to significantly reduce our prison population." HCR 85 Task Force Report at xiv. (emphasis added). An additional recommendation was for the legislature to create an independent oversight commission with broad authority to investigate and report on prison conditions[.] HCR 85 Task Force Report at xv.

i. Act 179, Session Laws of Hawaiʻi 2019

The legislature heeded the Task Force's call, and the Hawaiʻi Correctional System Oversight Commission ("HCSOC" or the "Commission") was created by Act 179, Session Laws of Hawaiʻi 2019 (codified in Chapter 353L, Hawaiʻi Revised Statutes), "to ensur[e] transparency, support safe conditions for employees, inmates, and detainees, and provide positive reform towards a rehabilitative and therapeutic correctional system." Act 179, 2019 Haw. Sess. Laws 1 § 1. Pursuant to HRS § 353L-3(b), the HCSOC has jurisdiction over transitioning Hawaii's correctional

system to a rehabilitative model, and preventing inmate populations from exceeding the capacity of each correctional facility:

> (1) Oversee the State's correctional system and have jurisdiction over investigating complaints at correctional facilities and facilitating a correctional system transition to a rehabilitative and therapeutic model;
>
> (2) Establish maximum inmate population limits for each correctional facility and formulate policies and procedures to prevent the inmate population from exceeding the capacity of each correctional facility;

HRS § 353L-3(b). (emphasis added).

Much of the HCSOC's powers and duties are delegated to the HCSOC's oversight coordinator ("Coordinator") who joined the HCSOC in July 2022; she is responsible for submitting monthly reports to the HCSOC, the Governor, and the legislature regarding actions taken by the HCSOC. See HRS § 353L-6. The reports contain information gathered by the Coordinator through ongoing study and investigation of Hawaii's correctional system, including information obtained by site inspections of correctional facilities and review of State records. See HRS § 353L-5-7.

The Coordinator's first monthly report, dated August 18, 2022, included observations from site visits to Oahu Community Correctional Center ("OCCC"), Halawa Correctional Facility ("HCF"), Waiawa Correctional Facility ("WCF") and Women's Community Correctional Center ("WCCC") where the

Coordinator observed, inter alia, "evident overcrowding" along with "healthcare concerns" and "evident staffing shortages."[30]

The Coordinator's second report, dated September 2, 2022, was a special report on the conditions observed at the Hawaiʻi Community Correctional Center ("HCCC") on August 25 and August 31, 2022.[31] According to the Coordinator's report, the conditions at HCCC presented "a complete lack of humane treatment and decency as a whole towards individuals with potentially self-harming ideations and/or actions." HCCC Special Report at *4. This "is of particular concern given the recent string of successful suicides within the Hawaii correction system." Id.

The Coordinator's HCCC observations also detailed acute overcrowding, with 259 individuals being housed in a facility with a design capacity of 152, for an effective "170% occupancy rate." HCCC Special Report at *2. Overcrowding was evident in "[n]early every cell, [where] each [cell] originally

[30] Christin Johnson, August 2022 Oversight Coordinator Report (Aug. 18, 2022), available at https://hcsoc.hawaii.gov/wp-content/uploads/2022/09/August-2022-Oversight-Coordinator-Report.pdf (last visited Feb. 28, 2023).

[31] Christin Johnson, Special Report - August 2022 HCCC Observations (Sept. 2, 2022)(Hereafter, "HCCC Special Report"), available at https://hcsoc.hawaii.gov/wp-content/uploads/2022/09/HCSOC-August-2022-HCCC-Observations.pdf (last visited Feb. 28, 2023).

designed for one person, had three or four individuals housed." Id. HCCC's COVID-19 housing unit--described as "a shipping container that has four cells"--constituted cells that "appeared to be made for two people in custody" but actually housed "a minimum of three to four people inside (where present, the fourth individual had a mattress on the floor)." HCCC Special Report at *4. (emphasis added). These "completely pitch black" cells were further described as "present[ing] a lack of space and sunlight in addition to concerns for officer safety." Id. (emphasis added). The report further warned of multiple "[p]otential federal violations" as inmates were observed living on the floors of cells without access to running water, toilets, light, or mattresses, some of whom were on suicide or safety watch:

> One cell in particular was a dry-cell, meaning it had no toilet or access to water. This cell had at least five women housed inside with mattresses on the floor. The Oversight Coordinator asked the women how long they had been in that cell – one woman said a month and the others had said two weeks. Dry cells are meant to be used for a few hours while proper placement is found. Dry cells are designed for temporary holding, never to be used as housing.
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> . . . .
>
> Another cell had one woman in it who appeared to be on suicide watch, or safety watch. There was no bed or mattress in the dry cell.
>
> . . . .
>
> The [COVID-19] housing is a shipping container that has four cells and, based on the cell size appeared to be made for two people in custody. However, each cell had a three-tiered bunk bed and a minimum of three to four people

> inside (where present, the fourth individual had a mattress on the floor). The cells had little circulation, no food slot, and a small window with low visibility for officers to see . . . . Due to a lack of windows and lack of natural light, the cells were completely pitch black. An officer had expressed that they must use their flashlight to shine in the cells and see. These cells present a lack of space and sunlight in addition to concerns for officer safety since they must open the cell doors to give people their meals.
>
> . . . .
>
> One unit of cells (G-Unit) did not have any bunkbeds or bedframes at all – only mattresses on the floor. Another unit of cells, which had 10 cells in an L-shape were in horrendous condition. It was impossible to have a clear view inside the cells as nearly every glass panel was shattered and badly damaged. Additionally, many (if not all) of the doors had padlocks on them.
>
> . . . .
>
> Padlocks on cell doors add significant delay in reaching people in custody if there is an emergency (assault, fight, medical emergency, fire, etc.). A combination of staffing shortages, lack of visibility, and padlocks on the cell doors is of grave concern for how often individuals are being checked on and monitored. . . . This also creates an extremely unsafe condition for staff who are forced to open the doors in order to check on individuals who undoubtedly are experiencing high tensions due to the inhumane living conditions they are faced with.
>
> . . . .
>
> [T]he Oversight Coordinator found two individuals on Safety Watch who were housed behind a door in Punahele, on the floor, in front of four cells in G Unit. This is of serious concern due to 1) lack of access to water and toilets, 2) lack of visibility from officer desk, 3) lack of privacy from 12+ people in custody within the cells, 4) no bedframe, 5) no area to store their property, and 6) a complete lack of humane treatment and decency as a whole towards individuals with potentially self-harming ideations and/or actions. This is of particular concern given the recent string of successful suicides within the Hawaii correction system.

HCCC Special Report at *2-5. (emphasis added).

The HCSOS 2022 Annual Report further set forth the Coordinator's overall impressions of the issues present at all

correctional facilities in Hawaiʻi, highlighting (1) "serious overcrowding attributing to inhumane conditions" with jails operating at "156% capacity" and (2) "[e]vident staffing shortages . . . potentially affecting officer safety and safety of [the] incarcerated population."[32] The Coordinator's observations reveal severely overcrowded, unsanitary, traumatic, and unsafe conditions of confinement within Hawaiʻi's correctional system that have lead to unlawful lethal consequences.

On March 29, 2022, a judge of the first circuit court for the State of Hawaiʻi awarded $1.375 million to the family of 28-year-old Joseph O'Malley ("Joey"), who committed suicide at Halawa Correctional Facility ("HCF"). Michael J. O'Malley v. State, Civ. No. 19-1-1021, Findings of Fact, Conclusions of Law and Order dated March 29, 2022, First Circuit Court, State of Hawaiʻi. Uncontroverted expert testimony received by the circuit court in Mr. O'Malley's case from Dr. Pablo Stewart[33] determined

[32] HCSOC, Annual Report 2022 (2022)(Hereafter, "HSCOC Annual Report 2022"), available at https://hcsoc.hawaii.gov/wp-content/uploads/2023/01/2022-HCSOC-Annual-Report-FINAL.pdf (last visited Feb. 28, 2023)(emphasis added).

[33] See id. at FOF No. 82 for Dr. Pablo Stewart's qualifications as an expert in psychiatry, with a specialty in correctional psychiatry:

> Pablo Stewart, M.D., is an expert in psychiatry with a specialty in correctional psychiatry. Dr. Stewart is licensed to practice

continued . . .

that "[Joey] was not provided with appropriate mental health care while incarcerated at HCF, and that [Joey's] severe mental illness went untreated and was actually made worse by the conditions of his confinement at that facility." Id. at FOF No. 82. (emphases added). The defendants in Mr. O'Malley's case--the State and the State of Hawaiʻi Department of Public Safety ("DPS")—conceded through stipulation that "they negligently breached the applicable standards of care in connection with both their custodial supervision and their medical treatment of [Joey] while he was incarcerated at [HCF], and that these breaches of duty legally caused [Joey's] injury and death[.]" Id. at *1. (emphases added). Thus, the State is well aware of

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> medicine in Hawaiʻi and California. He is a Diplomat and Examiner for the American Board of Psychiatry and Neurology. Dr. Stewart currently holds an academic appointment as Clinical Professor/Psychiatrist, with the University of Hawaiʻi, John A. Burns School of Medicine, and also serves as Attending Physician with the John A. Burns School of Medicine, with duties that include supervising psychiatric residents in their provision of acute and chronic care to the mentally ill inmate population housed at OCCC. Throughout Dr. Stewart's professional career, he has had extensive clinical research and academic experience in the diagnosis, treatment, and prevention of mental illnesses in correctional and other institutional contexts, and he has specialized in community and correctional treatment programs for individuals with chronic and severe mental illnesses as well as substance abuse and related disorders. Dr. Stewart has extensive experience and knowledge concerning the severe impact of prolonged isolation on mentally ill inmates, including the dangerous nature of punitive suicide watch conditions.

Michael J. O'Malley, Civ. No. 19-1-1021, FOF No. 82. (cleaned up).

the conditions within its correctional system, and the traumatic, sometimes fatal consequences that result.

The United States District Court for the District of Hawai‘i has also acted to alleviate the unsafe conditions at all DPS correctional facilities. On July 13, 2021, considering a record consistent with the Coordinator's observations, the federal district court for the district of Hawai‘i found a strong likelihood that DPS, in the context of the COVID-19 pandemic, was acting with "deliberate indifference" in subjecting people incarcerated at HCCC, HCF and WCF to, inter alia, "overcrowding," "unsanitary living conditions," and a "lack of adequate medical care." Chatman v. Otani, No. CV 21-00268 JAO-KJM, 2021 WL 2941990, at *18-19 (D. Haw. July 13, 2021) (Order (1)Granting Plaintiffs' Motion for Provisional Class Certification and (2)Granting in Part and Denying in Part Plaintiffs' Motion for Preliminary Injunction and Temporary Restraining Order). The court ordered DPS to "immediately implement and adhere to DPS's [Pandemic] Response Plan at all eight [correctional] facilities" and "provide sanitary living conditions to all inmates in DPS custody, *i.e.*, regular access

to a working toilet, sink, and drinking water."[34] Id. at *1, *24. The fact that the findings set forth in the order in July of 2021 match the Coordinator's reported observations in August 2022 illustrates the persistence of Hawaii's overcrowded, unsafe conditions over long periods of time, and the judiciary's awareness of the same.

This court has also acknowledged "the overcrowding in our state's correctional facilities[.]" Matter of Individuals in Custody of State, No. SCPW-21-0000483, 2021 WL 4762901, at *7 (Haw. Oct. 12, 2021) As a result, this court exercised its authority to "alleviate overcrowding" by releasing incarcerated individuals (during the COVID-19 pandemic) who did not "pose a significant risk to the safety of the inmate or the public." Matter of Individuals in Custody of State, No. SCPW-20-0000509, 2020 WL 4816344, at *2 (Haw. Aug. 18, 2020), clarified on denial of reconsideration, No. SCPW-20-0000509, 2020 WL 5036224 (Haw. Aug. 26, 2020). Thus, Hawaii's correctional system is demonstrably overcrowded, with jails operating system-wide at 156% capacity and subjecting correctional staff and incarcerated

[34] The order also granted plaintiffs' motion for provisional class certification and granted in part and denied in part plaintiffs' motion for preliminary injunction and temporary restraining order. Id. at *25.

individuals to unsafe and "inhumane conditions"--facts which all branches of government are aware of.[35]

The legislature has codified its intent to address the systematic overincarceration of Hawaii's people by mandating the HCSOC to (1) "[e]stablish maximum inmate population limits for each correctional facility and formulate policies and procedures to prevent the inmate population from exceeding the capacity of each correctional facility;" and (2) "facilitate[e] a correctional system transition to a rehabilitative and therapeutic model[.]" HRS § 353L-3(b). (emphasis added).[36]

The legislature's clear mandate to reduce the number of incarcerated individuals in Hawai'i further evinces the legislature's intent that no exception be read into the straightforward language of 706-671(1) and 706-671(2) that would preclude full credit for time served against each of the sentences comprising a consecutive sentence. The plain language of HRS § 706-671(1) and 706-671(2) provides credit for time served against each "sentence" imposed for a particular "crime[.]" HRS § 706-671(1)-(2). As discussed supra in

[35] HSCOC Annual Report 2022 at 15.

[36] The HCSOC has begun executing the mandate of HRS § 353L-3(b) by "draft[ing] and/or publicly support[ing] legislation proven to safely lower inmate populations without jeopardizing public safety." HSCOC Annual Report 2022 at 19. (emphasis added). This includes "support[ing] legislative changes that. . . .reserv[e] incarceration for those who truly need to be detained." Id. at 18. (emphasis added).

sections III and IV, nowhere in either provision is there language suggesting that in the context of consecutive sentences, credit for time served should be supplied only once against the aggregate of sentences imposed. Inventing an exception to preclude credit for time served in the context of consecutive sentencing perpetuates overincarceration, and defies the legislature's mandate to reduce the population of incarcerated individuals in Hawai'i.

Vaden should receive 340 days credit against both the five-year sentence and the ten-year sentence comprising his consecutive fifteen-year sentence. Accordingly, his maximum period of incarceration, if any, should be 13 years and 50 days. Because Vaden only received 340 days credit against the five-year sentence, Vaden is serving a term of 14 years and 25 days, which is 340 days longer than his legal sentence.

VI. The plea agreement in this case is illegal because it precluded the sentencing court from applying Vaden's individual circumstances to his resentencing after he failed to complete the Maui Drug Court Program.[37]

Significant individual factors important to the court's determination as to whether to impose a consecutive sentence after Vaden was terminated from drug court were

[37] Petitioner failed to raise the issue of the illegality of the plea agreement. The dissent would have ordered supplemental briefing on the legality of the plea agreement pursuant to Hawai'i Rules of Appellate Procedure Rule 28(b).

precluded from the sentencing court's consideration by the plea agreement Vaden agreed to in order to enter drug court.

To be subject to early release and enter drug court, Vaden entered no-contest pleas in five cases: 2PC-18-0000315, 2PC-18-0000348, 2CPC-18-0000413, 2CPC-18-0000457, and the instant case on appeal, 2PCP-18-0000844.[38] In exchange, Count 1 in case 2CPC-18-0000844, attempted promoting a dangerous drug in the first degree, was dismissed with prejudice. The "Form K" documenting the plea agreement stated that "Defense understands that if Defendant does not successfully complete the Maui Drug Court Program, the State and Defense agree to consecutive prison terms with 2CPC-18-0000844 to run consecutive[ly] to all other cases. And 2CPC-18-0000413, 2CPC-18-0000457, 2CPC-18-0000348 & 2CPC-18-0000315 to run concurrent to each other, but consecutive to 2CPC-18-000844."[39] Thus, on May 13, 2019, approximately eight months before he was terminated from drug court, the plea agreement predetermined that Vaden would receive an automatic consecutive sentence if he failed to complete the drug court program. Specifically, Vaden would receive concurrent five-year

[38] See supra note 8 for the offenses charged in each case.

[39] As the Majority notes, the parties agreed to waive the PSR in this case. I agree with the Majority that "these reports play an important role in our criminal justice system and trial courts should not consent to their waiver as a matter of course."

terms of prison for each of the four cases, which would run consecutively to a ten-year prison term imposed for the instant case, for a total fifteen-year consecutive term.

Sentencing judges must consider the defendant's individual circumstances when resentencing a defendant whose probation has been revoked. HRS § 706-606 specifically provides that "[t]he court, in determining the particular sentence to be imposed, shall consider…the history and characteristics of the defendant" as well as "the kinds of sentences available." (emphasis added). In other words, "judges are duty-bound to consider HRS § 706-606 factors before imposing [a] sentence." State v. Sinagoga, 81 Hawai'i 421, 428, 918 P.2d 228, 235 (1996) (overruled on other grounds). Additionally, "the legislative purpose of" HRS § 706-668.5, which provides authority for multiple sentences of imprisonment to run either concurrently or consecutively, "is to give the sentencing court discretion" based on the need "to deter future criminal behavior, to insure public safety, and to assure just punishment[.]" Tauiliili 96 Hawai'i 195, 199, 29 P.3d 914, 918 (2001). The plea agreement in this case precluded the sentencing court[40] from considering the cause of the violation of the MDC Program as well as individual

[40] The Honorable Richard T. Bissen, Jr. presided.

factors critical to an informed decision as to what, if any, period of incarceration or treatment was required for a just sentence.[41]

Specifically, the illegal plea agreement prevented the sentencing court from considering potentially significant circumstances mitigating against consecutive sentences. Vaden's criminal history is limited and non-violent. The five cases to which Vaden pled no contest to on May 13, 2019 were nonviolent and his first felony charges in the State of Hawai'i. Other than these five cases, Vaden accumulated traffic infractions and was convicted of several contempt of court charges for missing court hearings. With respect to substance abuse history, a summary report produced by the MDC Program assessed Vaden's "criminal

[41] See HRS § 706-606, which provides:

> The court, in determining the particular sentence to be imposed, shall consider:
> (1) The nature and circumstances of the offense and the history and characteristics of the defendant;
> (2) The need for the sentence imposed:
> (a) To reflect the seriousness of the offense, to promote respect for law, and to provide just punishment for the offense;
> (b) To afford adequate deterrence to criminal conduct;
> (c) To protect the public from further crimes of the defendant; and
> (d) To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
> (3) The kinds of sentences available; and
> (4) The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

and substance abuse history" and found that it "placed him firmly in the demographic of the 'high risk-high need' clients that the Maui Drug Court Program was designed to serve." This same report detailed Vaden's successful treatment and employment history in the MDC Program prior to his termination, including (1) Vaden's participation in substance abuse treatment with Aloha House; (2) Vaden's compliance with the MDC Program's requirements that he attend twelve-step recovery meetings and "obtain a "sponsor" to direct his twelve-step recovery program; (3) Vaden's gainful employment with Maui Disposal, where he was described as "a hardworking and dedicated employee"; and (4) Vaden's successful "advance[ment] to Phase II in the MDC [P]rogram and Phase B in treatment." This record of successful treatment history prior to relapse and termination from the MDC Program evinces Vaden's ability to comply with drug court protocols and treatment, and indicates Vaden's prospects for future rehabilitation and reentry into society. The plea agreement precluded consideration of these rehabilitative factors and the circumstances surrounding Vaden's December 2019 relapse into heroin use—-a relapse preceded by an October 2019 medical emergency where hospital personnel administered prescribed morphine to Vaden.

On October 3, 2019, approximately three months before being terminated from the MDC Program, Vaden appeared at his

scheduled MDC Program appointment "in a wheelchair with large bandaging/gauze wraps on both legs and arms" having been in a dirt bike accident that resulted in an "emergency room" visit "where morphine was administered." (emphasis added). That Vaden received prescribed opiates in response to a medical emergency during active participation in substance abuse treatment is of note, particularly in the context of his eventual heroin relapse and termination from the MDC Program. The risks associated with the use of medically prescribed opiates and their ability to trigger addiction are well-documented by the Center for Disease Control and Prevention ("CDC"). Approximately eighteen months prior to Vaden's termination from the MDC Program, the CDC promulgated guidelines for "patients and clinicians to determine risks and benefits of opioid therapy" and to give "consideration [to] nonopioid options[.]"[42] This medical emergency and administration of opiate medication is relevant when assessing Vaden's slide back into addiction. According to the MDC Program report, Vaden was eventually hospitalized for "seizures" on December 3 and 4, 2019, and on December 13, 2019, Vaden met with

[42] Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, 2018 Annual Surveillance Report of Drug-Related Risks and Outcomes — United States Surveillance Special Report (August 31, 2018), available at https://www.cdc.gov/drugoverdose/pdf/pubs/2018-cdc-drug-surveillance-report.pdf (last visited Feb. 28, 2023).

MDC Program staff and "admitted using heroin and overdosing." On this record, Vaden's medical emergency--which required administration of prescribed morphine--brings important context to his eventual relapse and termination from the MDC Program. Such circumstances are directly relevant to assessing what length of incarceration, or treatment, should result from Vaden's termination in the MDC Program. The plea agreement prohibited the sentencing court's consideration of these rehabilitative factors prior to sentencing Vaden to fifteen years of incarceration.

The automatic consecutive sentence required by Vaden's plea agreement also runs contrary to case law prohibiting trial courts from engaging in "blind adherence" to "sentencing guidelines promulgated without legislative authority." State v. Nunes, 72 Haw. 521, 524, 824 P.2d 837, 839 (1992). In Nunes, the sentencing court followed guidelines which "were issued to all judges in the Special Division of Family Court by another judge in the Special Division" and failed to consider the individual factors listed in HRS § 706-606 when sentencing the defendant. Id. at 523, 824 P.2d at 838. This court vacated the defendant's sentence and remanded for resentencing. Id. at 526, 824 P.2d at 839. Here, the duty of the sentencing court to consider the individual circumstances of the defendant at sentencing is more severely violated than in Nunes. The court

in Nunes was given some discretion, albeit discretion improperly truncated by a judicially created set of guidelines. The court resentencing Vaden was given no discretion by the plea agreement, which automatically imposed a consecutive sentence. Consequently, the plea agreement violated the mandate of HRS § 706-606 that the court consider Vaden's individualized circumstances.

The failure to consider Vaden's individualized circumstances at sentencing also constituted a deprivation of Vaden's constitutional right to due process pursuant to State v. Huelsman, 60 Haw. 71, 89, 588 P.2d 394, 405 (1978)(overruled on other grounds). The Huelsman court held that imposing a sentence without conducting an inquiry into a defendant's character and potential for rehabilitation would constitute a deprivation of due process:

> Where the sentencing process involves an inquiry into the defendant's character in order to arrive at a sentence which gives appropriate recognition to his potential for rehabilitation and his threat to society, the statement of these criteria provides a sufficient safeguard against arbitrary or capricious action by the sentencing judge. A sentence imposed in the absence of such minimum safeguards against arbitrary and capricious selection of sentences would, in our opinion, deprive the defendant of the due process guaranteed by the state constitution.

Huelsman, 60 Haw. at 89, 588 P.2d at 405. (Emphasis added). Like Vaden, Huelsman was denied individualized consideration at sentencing. Id. This denial of individualized consideration at

sentencing constituted a violation of Huelsman's due process protection against "arbitrary and capricious action by the sentencing judge[.]" Id. Huelsman successfully challenged the imposition of his extended sentence[43] on grounds that the sentencing statute failed to sufficiently guide the sentencing court's discretion "in violation of the due process guarantee of the Hawaii Constitution." Huelsman, 60 Haw. at 73, 588 P.2d at 396.

Here, Vaden's plea bargain operates much like the unconstitutionally restrictive guidelines in Huelsman. The automatic consecutive sentence required by the plea agreement precluded the sentencing court from engaging in consideration of Vaden's individualized circumstances at resentencing; as such, the plea agreement failed to grant the sentencing court discretion. Vaden's sentence was thus imposed in the absence of "minimum safeguards" (individualized consideration, and guidance for sentencing court discretion) specifically designed to protect Vaden's due process protections guaranteed by the state constitution.

Vaden is a young, non-violent offender without a substantial criminal history. Prior to termination from drug

[43] Huelsman contested sentences that were extended from the normal open term and imposed to run concurrently. Huelsman, 60 Haw. at 73, 588 P.2d at 396.

court, he was found amenable to rehabilitation by the State, the circuit court judge, and defense counsel. He successfully completed approximately five months of the MDC Program before suffering a medical relapse into substance abuse disorder. Without the illegal restriction of its discretion by the plea agreement, the sentencing court would be free to find that a just sentence for Jonathan Vaden is not a mandatory consecutive sentence totaling fifteen years of incarceration.

For these reasons, Vaden's plea agreement triggering consecutive sentences was illegal, and the sentences imposed pursuant to it should be vacated and remanded for reconsideration consistent with this opinion.

VII. Conclusion

The ICA's Judgment on Appeal and the circuit court's Order of Resentencing should be vacated and remanded to the circuit court for resentencing with due consideration of Vaden's individual factors pursuant to HRS § 706-606. Upon resentencing, if a consecutive sentence was imposed, Vaden's 340 days of pretrial and probation incarceration should be credited

against each of the sentences comprising the consecutive sentence.[44]

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

[44] I concur with the Majority's direction to the Department of Public Safety to furnish the circuit court with certificates of detention in order to comply with HRS § 706-671(1) and (2).