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Intermediate Court of Appeals
CAAP-24-0000352
30-SEP-2026
07:58 AM
Dkt. 99 SO**

NO. CAAP-24-0000352

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
v.
CYNTHIA E. TRISOLINI, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CASE NO. 1DCW-23-0000542)

SUMMARY DISPOSITION ORDER

(By: Nakasone, Chief Judge, Wadsworth and Guidry, JJ.)

Defendant-Appellant Cynthia E. Trisolini (**Trisolini**) challenges her conviction for fourth-degree criminal property damage, in violation of Hawaii Revised Statutes (**HRS**) § 708-823,¹ for damaging the plants of her neighbor. She also challenges aspects of her sentence, with regard to the restitution award and the imposition of particular probation conditions. We affirm the conviction and the restitution award and vacate in part as to the probation conditions.

¹ HRS § 708-823 (2014) provides that "[a] person commits the offense of criminal property damage in the fourth degree if . . . the person intentionally or knowingly damages the property of another without the other's consent."

Trisolini appeals from the April 23, 2024 "Judgment and Notice of Entry of Judgment" (**Judgment**), entered by the District Court of the First Circuit (**District Court**).²

On appeal, Trisolini raises four points of error (**POEs**), contending the District Court erred by **(1)** "failing to address whether Trisolini's testimony and Exhibit D proved that the plants were on Trisolini's land" and "concluding that property boundaries were irrelevant in determining ownership of the plants, contrary to *Whitesell v. Houlton*[,] [2 Haw. App. 365, 632 P.2d 1077 (App. 1981)]"; **(2)** "failing to make findings of fact and conclusions of law regarding whether the plants were within Trisolini's property boundaries"; **(3)** "awarding restitution for costs that were speculative, unsupported by evidence, or unrelated to the damage caused"; and **(4)** "abus[ing] its discretion by imposing conditions of probation that were unsupported by the evidence and unrelated to the offense."³

Upon review of the record on appeal and relevant legal authorities, giving due consideration to the issues raised and arguments advanced by the parties, we resolve the contentions as follows.

Trisolini was charged with fourth-degree criminal property damage in relation to a January 25, 2023 incident in which she climbed over a fence/wall that stood between her and her neighbor's properties and allegedly damaged the neighbor's (Heidi Kreplin (**Kreplin**)) plants. During the November 7 and 14,

² The Honorable Alvin K. Nishimura presided.

³ Trisolini's POEs have been consolidated, reorganized, and renumbered for clarity. In POE 1, Trisolini fails to identify where and how she preserved her *Whitesell v. Houlton*-based challenge. See Hawaii Rules of Appellate Procedure (**HRAP**) Rule 28(b)(4)(ii) and (iii). Trisolini's Opening Brief also does not identify where and how she preserved the challenges set forth in POEs 2, 3, and 4. See *id.* Such noncompliance impedes expeditious appellate review.

2023 bench trial, Plaintiff-Appellee State of Hawai'i (**State**) presented video evidence and witness testimony by Kreplin and a neighbor of both Trisolini and Kreplin, Courtney Caldwell (**Caldwell**), to establish Kreplin's ownership of the plants and that Trisolini damaged them. A six-minute video of the incident recorded by Caldwell shows Trisolini on Kreplin's side of the fence/wall appearing agitated, pulling or removing plants and throwing them over to her side of the fence/wall. Trisolini's defense argued that the damaged plants were located within Trisolini's property line, and therefore Kreplin's ownership had not been established. The defense witnesses included Fluvio Fonda (**Fonda**), a previous resident of the area, and Trisolini. Fonda testified that the fence/wall was "about 1 inch" on Trisolini's property, and that the "ti leaves" planted on Kreplin's "side of the wall are actually on [Trisolini]'s property[.]" Trisolini admitted that she "ripp[ed] some of the ti leaf leaves off," but claimed that those plants were hers, because "[she] planted them" and they were "on [her] property." She denied damaging any papaya or plumeria trees.

At the conclusion of evidence on November 14, 2023, the District Court found Trisolini guilty as charged, explaining that it found Kreplin credible and Trisolini not credible, as follows:

[THE COURT]: The real issue is the plants that were damaged, whose plants were they? . . . Clearly from the testimony and from the video the plants were intentionally damaged. So who -- whose plants were they?

The Court finds the testimony of [Kreplin] to be credible that they were her plants. The Court finds [Trisolini]'s testimony not credible. . . . [I]t defies common sense to say these are my plants and I care about my plants, and then go over there and just rip them apart.

The only plants . . . that [Trisolini] could testify was [sic] her plants were the ti plants. The exhibits show

that there were other plants damaged. The papaya, the plumeria. Clearly those belong to [Kreplin].

So the Court finds that the State has met its burden of proving every element of the offense beyond a reasonable doubt that there was no consent to damage the property of [Kreplin], and that the damage was intentionally caused by [Trisolini].

. . . .

[W]e can go through a whole long list of all the testimony that, you know, the property line issues really -- if anything would perhaps show some reasonable belief that some plants belonged to one person or the other. . . . [But] it doesn't matter whose property it's on. It's whose property it is that really matters.

And as I indicated, the Court believes the testimony of [Kreplin] that those plants were her plants.

(Emphases added.)

On April 23, 2024, the District Court held a hearing on sentencing and restitution. Kreplin testified that the papaya tree damaged by Trisolini had died; that "five good-sized mature clumps" of ti plants "ha[d] not come back"; and that the plumeria plant was now a short "stump" that "hasn't really recovered." Kreplin requested restitution of \$842.93, based on an estimate from Turf and Shrub Care Hawaii, Inc. (**Turf and Shrub**), a plant nursery, for "delivery, installation" of five three-gallon ti plants, a papaya tree, and a white plumeria. Trisolini objected to restitution, arguing that the probation officer had not verified the amount of damage to the plants, and that the inclusion of delivery and installation costs was unjustified.

The District Court sentenced Trisolini to six months probation and restitution of \$842.92 to Kreplin, stating that "the purpose [of restitution] is to make the victim whole" and finding the "estimate and figures . . . reasonable under this situation and circumstances." In addition, the District Court

ordered Trisolini to submit to a mental health assessment and any treatment deemed necessary, an alcohol or substance abuse assessment and any treatment deemed necessary, and anger management treatment. Regarding the mental health assessment and treatment order, the District Court noted that "[b]ased on the presentence report . . . it may be appropriate." The District Court provided no explicit reasoning for the alcohol or substance abuse assessment and treatment and anger management treatment orders. The record does not reflect an objection by Trisolini to any of the assessment or treatment-related sentencing terms.

(1) Trisolini argues that "[t]he trial court's dismissal of Exhibit D and reliance on speculative reasoning leave the appellate court with no substantial evidence supporting" a conclusion that the property damaged by Trisolini belonged to "another," an element required under HRS § 708-823. Trisolini further argues that the District Court "erred in concluding that property boundaries were irrelevant in determining ownership of the plants, contrary to *Whitesell v. Houlton*[,]""⁴ and that this "legal error undermines the State's case because ownership is an essential element of the offense."

Trisolini's arguments go to the weight the District Court accorded the evidence, and are unpersuasive. The record reflects that Kreplin testified that she owned the damaged papaya tree, plumeria tree, and ti plants, and the District Court found Kreplin's testimony "credible." This court does "not pass upon [a] trial judge's decisions with respect to the

⁴ Trisolini argues that *Whitesell*, 2 Haw. App. 365, 632 P.2d 1077 stands for the proposition that "[p]roperty boundaries and root locations are the determinative factors for [plant] ownership under Hawai[']i law."

credibility of witnesses and the weight of the evidence[.]"

State v. Eastman, 81 Hawai'i 131, 139, 913 P.2d 57, 65 (1996).

Trisolini does not indicate where her Whitesell-based argument was made below. See State v. Moses, 102 Hawai'i 449, 456, 77 P.3d 940, 947 (2003) ("As a general rule, if a party does not raise an argument at trial, that argument will be deemed to have been waived on appeal[.]" (citations omitted)). The record reflects that Trisolini made the argument below that the ownership of the plants should be determined by the property line, but did not specifically cite Whitesell to the District Court. In any event, the Whitesell argument regarding ownership of the plants based on property boundaries goes to the weight of the evidence, upon which we do not pass on appeal. The District Court also found Trisolini's testimony, which included her claim disputing Kreplin's ownership of the plants located on Trisolini's side of the property line, to be "not credible." See Eastman, 81 Hawai'i at 139, 913 P.2d at 65. Trisolini's challenge that there was no substantial evidence to support her conviction, lacks merit. See State v. Kalaola, 124 Hawai'i 43, 49, 237 P.3d 1109, 1115 (2010).

(2) Relying on misrepresented authority,⁵ Trisolini claims the District Court "erred in failing to make findings of

⁵ The authority in the Opening Brief of State v. DeMello, 130 Hawai'i 332, 310 P.3d 1033 (App. 2013) does not stand for the proposition for which it was offered, and Trisolini's prior appellate counsel has acknowledged such in his July 20, 2026 "Response to Order to Show Cause." This court issued an Order to Show Cause to Trisolini's counsel on June 19, 2026, after finding multiple incorrect citations to authority in the Opening Brief. Citing cases that do not stand for the propositions for which they are cited "undermines the integrity of the judicial system and wastes limited judicial resources[.]" "by requiring judges and court staff to verify citations and address misconduct, thereby reducing the time available to address other matters." State v. Presti, No. CAAP-24-0000826, 2026 WL 2568264, at *5 (Haw. App. Aug. 31, 2026) (citing Bryan v. Child Support Enf't Agency, No. SCPW-26-0000169, 2026 WL 866894, at *2 (Mar. 30, 2026) (order)).

fact and conclusions of law regarding whether the plants were within Trisolini's property boundaries." As the State points out, the record reflects that Trisolini did not request such findings in accordance with Hawai'i Rules of Penal Procedure (HRPP) Rule 23(c),⁶ and this challenge is waived.

(3) Relying in part on misrepresented authority,⁷ Trisolini argues that because Kreplin originally "transported and planted the papaya tree and plumeria tree herself" and "was unsure whether she would replace the plumeria and papaya trees" after Trisolini had damaged them, Kreplin's restitution award of \$842.93 was based on "speculative [costs], unsupported by evidence, or unrelated to the damage caused." The State counters that "the evidence adduced at trial and at the contested restitution hearing demonstrated a sufficient nexus between [Trisolini]'s destruction of [Kreplin]'s plants and trees and their subsequent death and/or damage, providing the requisite basis for the [D]istrict [C]ourt to order restitution."

HRS § 706-646(2) (2014 & 2024 Supp.) provides for an award of restitution for "reasonable and verified losses suffered by the victim or victims as a result of the defendant's offense when requested by the victim." HRS § 706-646(3) provides that "[r]estitution shall be a dollar amount that is

⁶ HRPP Rule 23(c) provides in pertinent part, "[i]n a case tried without a jury the court shall make a general finding and shall in addition, on request made at the time of the general finding, find such facts specially as are requested by the parties." (Emphasis added.)

⁷ The authority in the Opening Brief of State v. Gaylord, 78 Hawai'i 127, 149, 890 P.2d 1167, 1191 (1995) does not stand for the proposition for which it was offered, and Trisolini's prior appellate counsel has acknowledged such. The argument relying on the misrepresented authority is waived, but we address the remaining argument that relies on HRS § 706-646. See Presti, 2026 WL 2568264, at *7 (disregarding as waived arguments supported by non-existent authority, and considering the remaining discernible arguments).

sufficient to reimburse any victim fully for losses, including but not limited to . . . [f]ull value of stolen or damaged property, as determined by replacement costs of like property, or the actual or estimated cost of repair[.]"

Here, Kreplin submitted a cost estimate from Turf and Shrub for five three-gallon ti plants, a papaya tree, and a plumeria plant, which included the cost of delivery and installation. Because the purpose of restitution is to "reimburse any victim fully for losses," which may include the estimated replacement costs of like property, the fact that Kreplin originally transported and planted the papaya and plumeria trees herself is not disqualifying. See HRS § 706-646(2). Returning Kreplin to the position she was in before Trisolini damaged her plants may reasonably require delivery and installation of replacement plants. That Kreplin "was unsure whether she would replace the plumeria and papaya trees" after Trisolini had damaged them is also not disqualifying, because restitution may include "estimated" costs of repair or replacement. See HRS § 706-646(3); State v. Davis, No. CAAP-23-0000597, 2025 WL 2927947, at **2 (Haw. App. Oct. 15, 2025) (SDO) (affirming a restitution award that covered the cost of repairing a complaining witness's car even though "she had not yet paid to repair the damage[,]" because HRS § 706-646(3) "expressly allows restitution to be based on the 'estimated cost of repair[']"). The \$842.92 restitution award was not "speculative" as it was supported by the Turf and Shrub estimate, and the replacement plants were directly related to the damage incurred by Kreplin as a result of Trisolini's offense. See HRS § 706-646(2). Trisolini did not present any contrary evidence to contest the amount requested by Kreplin.

Accordingly, the District Court's restitution award was within the scope of its discretion. See State v. Griffin, 83 Hawai'i 105, 107, 924 P.2d 1211, 1213 (1996) (reviewing a restitution award for abuse of discretion).

(4) Trisolini argues that the District Court abused its discretion by ordering her to submit to a "substance abuse assessment, anger management counseling, and a mental health assessment" as conditions of her probation, because "the record is devoid of any evidence that substance abuse, mental illness, or anger-related issues contributed to the commission of the offense[,] and the District Court "did not cite any findings or reasoning to justify these conditions." Trisolini asserts that such discretionary conditions may be imposed only if they "bear a reasonable relationship to the defendant's behavior, the offense, or the need for deterrence[," citing State v. Barrios, 139 Hawai'i 321, 328-29, 389 P.3d 916, 923-24 (2016).⁸

The State contends the mental health and substance abuse assessment and treatment conditions were supported by content on certain pages of the confidential presentence report. The State claims that "a review of the trial evidence reveals that the [D]istrict [C]ourt had sufficient information with respect to its decision to order [Trisolini] to undergo anger management treatment."

The record reflects that Trisolini did not object to the imposition of these conditions. While the failure to object at the time of sentencing generally results in forfeiture of such sentencing challenges on appeal, see State v. Kong, 129 Hawai'i 135, 143, 295 P.3d 1005, 1013 (App. 2013), Trisolini's

⁸ Barrios also does not stand for the proposition for which it was offered, and prior appellate counsel has acknowledged such.

Supplemental Brief⁹ on this POE requests plain error review, citing State v. Kahawai, 103 Hawai'i 462, 83 P.3d 725 (2004). Trisolini argues that "ordering an alcohol and substance abuse assessment and treatment, as necessary, as a condition of probation is a deprivation of liberty[,]" warranting plain error review. The State's Supplemental Brief agrees that "this court should apply plain error review" to this sentencing issue "for the sake of judicial economy" because an "illegal sentence may be raised by a defendant at any time pursuant to HRPP Rule 40[.]" We apply plain error review to this POE.

A court may impose discretionary conditions on a sentence of probation "to the extent that the conditions are reasonably related to the factors set forth in section 706-606 and to the extent that the conditions involve only deprivations of liberty or property as are reasonably necessary for the purposes indicated in section 706-606(2)[.]" HRS § 706-624 (2014 & 2024 Supp.). HRS § 706-606 (2014 & 2024 Supp.) sets forth general sentencing factors a court must consider, including "[t]he nature and circumstances of the offense and the history and characteristics of the defendant" in subsection (1). Conditions must be reasonably necessary for the following HRS § 706-606(2) purposes:

- (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

⁹ The parties submitted supplemental briefs pursuant to this court's September 16, 2026 Order, regarding this POE.

- (d) To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner[.]

Id. In addition, there must be "a factual basis in the record indicating that such conditions are reasonably related to the factors set forth in HRS § 706-606[.]" State v. Talo, 153 Hawai'i 63, 69, 526 P.3d 588, 594 (2023) (citing Kahawai, 103 Hawai'i at 462, 83 P.3d at 725) (emphasis added).¹⁰ "[A] sentencing judge is not limited to information from a [presentence report] or any particular source of information in considering the sentence." Kahawai, 103 Hawai'i at 465, 83 P.3d at 728.

Although the Hawai'i Supreme Court has "strongly . . . recommend[ed] that the sentencing court state its reasons for imposing [a] particular sentence[.]" Gaylord, 78 Hawai'i at 144, 890 P.2d at 1184 (ellipses omitted), the District Court in this case provided no explanation as to why it ordered anger management treatment as a probation condition. As the State points out, however, the trial record of the video showing Trisolini damaging Kreplin's plants in an agitated manner provides a factual basis for anger management treatment as a reasonably related correctional treatment under HRS § 706-606(2) (d). See Talo, 153 Hawai'i at 69, 526 P.3d at 594. On

¹⁰ Talo affirmed the imposition of a probation condition allowing warrantless searches by a probation officer for contraband, because the defendant "was convicted of a felony and a crime of violence, which prohibited him from owning or possessing firearms and ammunition, and because he had notice that 'contraband' would include such items." 153 Hawai'i at 64, 526 P.3d at 589.

In Kahawai, the Hawai'i Supreme Court vacated a sentence that included a substance abuse assessment, because the sentencing court "had no basis, other than the unsubstantiated argument of the prosecutor, in determining that substance abuse conditions were warranted." 103 Hawai'i at 467, 83 P.3d at 730.

this record, the District Court did not exceed the scope of its discretion with respect to the anger management condition. See State v. Carroll, 146 Hawai'i 138, 150, 456 P.3d 502, 514 (2020) (reviewing sentencing matters for abuse of discretion).

The trial record, however, does not reflect a factual basis to support the mental health and substance abuse assessment probation conditions, as "reasonably related" to any HRS § 706-606 sentencing factor. See Talo, 153 Hawai'i at 69, 526 P.3d at 594. The District Court did not provide a rationale for these conditions, and its purported justification "[b]ased on the presentence report" for the mental health assessment condition was inadequate. We conclude the District Court exceeded the scope of its discretion by imposing the mental health and substance abuse assessment probation conditions as part of Trisolini's sentence. See Carroll, 146 Hawai'i at 150, 456 P.3d at 514.

For the foregoing reasons, we affirm in part with respect to Trisolini's conviction, and we vacate the sentence set forth in the April 23, 2024 Judgment, entered by the District Court of the First Circuit. We remand for resentencing consistent with this Summary Disposition Order.

DATED: Honolulu, Hawai'i, September 30, 2026.

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/s/ Karen T. Nakasone
Chief Judge

/s/ Clyde J. Wadsworth
Associate Judge

/s/ Kimberly T. Guidry
Associate Judge