

**Electronically Filed
Intermediate Court of Appeals
CAAP-25-0000823
22-SEP-2026
07:51 AM
Dkt. 48 SO**

NO. CAAP-25-0000823

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
v.
TOMAS ALDAY-MORALES, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CASE NO. 2CPC-24-0000251)

SUMMARY DISPOSITION ORDER

(By: Nakasone, Chief Judge, Hiraoka, Guidry, JJ.)

Defendant-Appellant Tomas Alday-Morales (**Alday-Morales**) challenges the sufficiency of the record justifying the imposition of a fifteen-year consecutive sentence rather than a five-year concurrent sentence, for three counts of first-degree Violation of Privacy offenses under Hawaii Revised Statutes (**HRS**) § 711-1110.9(1)(a).¹ We vacate and remand for resentencing.

¹ Under HRS § 711-1110.9(1)(a) (2014 & Supp. 2024), Violation of Privacy in the First Degree (**Violation of Privacy First Degree**) is committed when a person "intentionally or knowingly installs or uses, or both, in any private place, without consent of the person or persons entitled to privacy therein, any device for observing, recording, amplifying, or broadcasting another person in a stage of undress or sexual activity in that place[.]"

Alday-Morales appeals from the October 23, 2025 "Judgment of Conviction and Sentence" (**Judgment**) entered by the Circuit Court of the Second Circuit (**Circuit Court**).² After pleading guilty to three counts of Violation of Privacy First Degree pursuant to a plea agreement, he was sentenced to a five-year term of imprisonment on each count, with each term to run consecutively. On appeal, Alday-Morales raises a single point of error, contending that the Circuit Court erred by "failing to properly consider and place on record the HRS § 706-606 factors and rationale for imposing multiple consecutive terms of imprisonment."

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 contention as follows.

Plaintiff-Appellee State of Hawai'i's (**State**) August 12, 2024 Indictment alleged that between January 1, 2021 and November 25, 2023, Alday-Morales placed two hidden video cameras in the bedroom of adult stepdaughter M.W., and one hidden video camera in the bedroom of adult stepson B.W., recording both stepchildren nude and engaged in sexual activity with their respective partners. The State also alleged that K.W., a minor stepdaughter, sometimes used M.W.'s bedroom, and nude pictures of K.W. were recorded as well. After being recorded, the videos and pictures were allegedly "uploaded to [Alday-Morales's] various other devices." On July 31, 2025, Alday-Morales entered into a plea agreement with the State in which Alday-Morales agreed to plead guilty to the three counts of Violation of

Violation of Privacy First Degree is a Class C felony, with a five-year maximum term of imprisonment. HRS § 711-1110.9(4).

² The Honorable Peter T. Cahill presided.

Privacy First Degree in exchange for the dismissal of the two counts of first-degree Promotion of Child Abuse and two counts of third-degree Promotion of Child Abuse.

At the sentencing hearing on October 23, 2025, the Circuit Court explained why it was rejecting a probation sentence in favor of imprisonment, as follows:

[THE COURT]: I did review the presentence report.

I don't always put a lot of stock into these reports. But these reports were pretty traumatic in this case. Mainly because they're just documenting what's on the videos.^[3] You know, there's really nothing to discuss here.

.

The sentencing factors do, as [Defense Counsel] describe[s], say that [Alday-Morales] is likely to respond affirmatively. I (Inaudible) disagreeing with that. But what he did is just legally indefensible. In my judgment, inexcusable.

.

But I read the victims' letters. And they just speak so loudly. And they were very well written, including the minor['s].

.

And in considering the sentencing factors of 706-606, this is an extraordinarily serious offense. It was done deliberately, intent --

.

There's got to be a message sent that in order to -- it's not promoting respect just for the law. It's promoting respect for human beings. For your own family.

.

In this case, probation is not an option to protect the public from further crimes of [Alday-Morales]. This is notoriously a type of activity that is subject to reoccurrence.

³ The Circuit Court appears to reference the videos and photos that Alday-Morales allegedly recorded, descriptions of which were included in the Presentence Diagnosis and Report.

I can't say that that would occur. I don't know. I can't predict it. But if that's a factor -- and I think it could be -- it's something that has to militate in favor of a severe sentence.

One of the things that almost never comes up in my mind in sentencing is educational or vocational training, medical care or other correctional treatment. Because I don't believe that jail is -- or prison is necessarily a place to provide effective treatment.

It typically is not, with the exception of sexual offenses.

. . . .

But the statute says I must consider that and is it available in a prison sentence.

Well, it is. Because until [Alday-Morales] does that treatment, he will not be getting paroled. It's quite different in sexual offenses. They don't parole you until you've actually completed the treatment.

. . . .

In this particular case -- [HRS § 706-606] says to avoid unwarranted sentencing disparities.

. . . .

[B]ut there are cases where a warranted sentencing disparity is appropriate.

And this is one of those cases. It just is. The facts are horrific.

I'm not going to go into the details, which I normally do. They're all part of the PSI. But it's -- they're just so horrible that -- and with the family here.

Bottom line is it's all documented.

(Footnote added.) The Circuit Court then sentenced Alday-Morales to five-year terms of imprisonment for each count, to run consecutively, as follows:

On the sentence, the Court finds that [Alday-Morales] must serve five years -- and you're remanded to the custody to [sic] the Department of Corrections and Rehabilitation -- on Count One, Two and Three, for five years on each term.

. . . .

Based upon my review of the sentencing factors -- which I reviewed in detail, not only on the record, but in consideration of this sentence and the sentencing -- presentence report in its entirety, listening to the victims, and considering [Alday-Morales's] own statements and statements of counsel, [Alday-Morales's] sentences are to run consecutive to one another, for a total of 15 years.

Alday-Morales argues the Circuit Court "failed to recite the specific circumstances leading it [to] impose consecutive sentences." While Alday-Morales concedes the Circuit Court conducted "some" analysis of the HRS § 706-606 factors, he claims the Circuit Court never "articulate[d] any reason why a concurrent sentence was insufficient or that a consecutive sentence was required." Alday-Morales further argues that "[t]he [C]ircuit [C]ourt did not 'articulate a rational basis' to distinguish the consecutive sentence for Count 1 and Count 2 from the consecutive sentence for Count 2 and Count 3[.]" Finally, Alday-Morales requests that this court "vacate the judgment and sentence imposed, and remand the case for resentencing before a different judge."

The State counters that the Circuit Court's "rationale of the significant harm, intentional conduct, need for deterrence and severe punishment was sufficient . . . justification" for the consecutive sentence. The State argues that if remanded, a different judge is not required.

"Absent clear evidence to the contrary, it is presumed that a sentencing court will have considered all factors before imposing concurrent or consecutive terms of imprisonment under HRS § 706-606." State v. Kong, 131 Hawai'i 94, 102, 315 P.3d 720, 728 (2013) (citation and brackets omitted). Nonetheless, the Hawai'i Supreme Court recently held that this presumption "does not excuse the court from articulating its reasoning, especially for consecutive sentencing. . . . The focus must be

on how the factors support a sentence beyond the concurrent default." State v. Bunag, 158 Hawai'i 122, 128, 587 P.3d 697, 703 (2026). To impose a consecutive sentence, a sentencing court "must consider the HRS § 706-606 factors" and "adequately distinguish between the need for consecutive sentences and the sentence a defendant would have received under the presumption of concurrent sentencing." Id. at 127, 587 P.3d at 702 (citing State v. Bautista, 153 Hawai'i 284, 290, 535 P.3d 1029, 1035 (2023) (internal quotation marks omitted)). "[A] sentencing court should explain its rationale for each consecutive sentence in order to inform the defendant and appellate courts of the specific factors underlying each sentence." State v. Barrios, 139 Hawai'i 321, 337, 389 P.3d 916, 932 (2016) (emphasis added).

Here, the Circuit Court did not specifically explain its rationale for imposing multiple consecutive sentences for three Class C felonies, totaling fifteen years. Though the Circuit Court analyzed pertinent HRS § 706-606(1) factors, it did not "articulat[e] a clear and comprehensive rationale for each consecutive sentence" and treated the three felonies "as one offense." See Bautista, 153 Hawai'i at 290-91, 535 P.3d at 1035-36. The record does not reflect the requisite "substantial and pointed reasons to justify" each consecutive sentence. See id. at 291, 535 P.3d at 1036. The Circuit Court's characterization of the facts as "horrific" and declaration that a sentencing disparity "just is" appropriate does not meet the supreme court's exhortation that sentencing courts "should explain [their] rationale for each consecutive sentence." See Barrios, 139 Hawai'i at 337, 389 P.3d at 932. The Circuit Court was required to "specify [the] basis . . . for determining how many consecutive sentences to impose," which it must do "[e]ven if a court uses identical factors to support multiple

consecutive sentences[.]" See Bautista, 153 Hawai'i at 290, 535 P.3d at 1035 (internal quotation marks omitted).

On this record, we conclude that the Circuit Court did not adequately justify its imposition of multiple consecutive sentences on Alday-Morales, as Hawai'i precedent requires, and accordingly, the sentence was outside the scope of its discretion. See Kong, 131 Hawai'i at 101, 315 P.3d at 727 (reviewing sentencing matters for abuse of discretion).

Finally, Alday-Morales's requested "resentencing before a different judge" is not supported by any argument or authority, and we do not address it. See Hawai'i Rules of Appellate Procedure Rule 28(b)(7).

For the foregoing reasons, the October 23, 2025 Judgment of Conviction and Sentence entered by the Circuit Court of the Second Circuit is vacated with respect to the sentence imposed, and we remand for resentencing.

DATED: Honolulu, Hawai'i, September 22, 2026.

On the briefs:

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for Defendant-Appellant.

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County of Maui
for Plaintiff-Appellee.

/s/ Karen T. Nakasone
Chief Judge

/s/ Keith K. Hiraoka
Associate Judge

/s/ Kimberly T. Guidry
Associate Judge