

**Electronically Filed
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NO. CAAP-24-0000373

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
STEPHEN H. BROWN, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CASE NO. 1PC151001964)

SUMMARY DISPOSITION ORDER

(By: Leonard, Presiding Judge, Hiraoka and McCullen, JJ.)

Stephen H. **Brown** was charged by felony information with Theft in the Second Degree. On June 22, 2016, the Circuit Court of the First Circuit granted his motion for deferred acceptance of no contest (**DANC**) plea.¹ He was placed into HOPE probation. The State moved to set aside his DANC plea. The circuit court granted the motion and resentenced Brown to five years in prison. Brown appeals. We dismiss the appeal as moot.

Between August 8, 2016, and May 24, 2017, the State moved to modify the terms and conditions of Brown's probation six times.² The circuit court granted the motions and each time ordered that Brown serve jail time.³

¹ The Honorable Glenn J. Kim presided.

² Brown failed to maintain substance abuse treatment, failed to report to his probation officer, was convicted of Theft in the Fourth Degree in another case, failed to maintain contact information, tested positive for marijuana twice, failed to report for drug testing, and tested positive for cocaine.

³ The Honorable Steven S. Alm and the Honorable William M. Domingo presided.

On October 23, 2017, the State filed a ***Motion to Set Aside Order for Deferred Acceptance of No Contest Plea, and Acceptance of Defendant's Plea for Judgment of Conviction and Sentence.*** The circuit court issued a bench warrant on October 27, 2017.

On December 7, 2017, police arrested Brown for the murder of Telma **Boinville**.⁴ The bench warrant in this case was executed on December 11, 2017, and a hearing on the Motion to Set Aside was set for January 5, 2018.

On December 12, 2017, a grand jury indicted Brown and Hailey Dandurand for Murder in the Second Degree and several other counts relating to Boinville's death (the **Boinville Murder** case). A jury found Brown guilty as charged. On December 6, 2023, Brown was sentenced to life in prison with the possibility of parole for Murder in the Second Degree, twenty years for Kidnapping, twenty years for Burglary in the First Degree, and thirty days for Criminal Property Damage in the Fourth Degree, all terms to be served consecutively, with credit for time served.⁵ Brown appealed. We affirmed. State v. Brown, No. CAAP-24-0000067, 2025 WL 1250691 (Haw. App. Apr. 30, 2025), cert. rejected, SCWC-24-0000067, 2025 WL 2721224 (Haw. Sept. 24, 2025).

In this case, the hearing on the Motion to Set Aside was continued several times, from January 5, 2018 to February 28, 2024. Brown requested six of the continuances because the Boinville Murder case was pending. Three continuances were due to the COVID-19 pandemic. The case was transferred to the circuit court division handling the Boinville Murder case on February 10, 2021.

Brown moved to dismiss the Motion to Set Aside two days before the February 28, 2024 hearing. At the hearing the circuit court denied Brown's motion to dismiss and granted the Motion to Set Aside. Sentencing was set for March 20, 2024.

⁴ We take judicial notice of the documents filed in State v. Brown, Case No. 1CPC-17-0001731, Circuit Court of the First Circuit, State of Hawaii. See Hawaii Rules of Evidence Rule 201.

⁵ Brown remained in custody from his arrest on December 7, 2017, until his sentencing on December 6, 2023.

Brown moved to dismiss resentencing two days before the hearing. The circuit court denied the motion. The *Order of Resentencing Revocation of Probation* was entered on March 20, 2024. Brown was resentenced to five years, with credit for time served, to run concurrent with his sentence in the Boinville Murder Case. The *Findings of Fact, Conclusions of Law, and Order Granting State's Motion to Set Aside Order for Deferred Acceptance of No Contest Plea, and Acceptance of Defendant's Plea for Judgment of Conviction and Sentence* was entered on May 21, 2024. This appeal followed.

Brown argues: (1) the circuit court lacked jurisdiction to resentence him because "the proceedings involving Brown's deferral have exceeded the 'maximum sentence allowable' mandated under" Hawaii Revised Statutes (**HRS**) § 853-1;⁶ and (2) the delay in resentencing deprived him of due process in violation of article I, section 5 of the Hawai'i Constitution and the Fourteenth Amendment to the United States Constitution.

The State argues Brown's appeal is moot because he completed his five-year sentence. "[A] case is moot if the reviewing court can no longer grant effective relief." Kaho'ohanohano v. State, 114 Hawai'i 302, 332, 162 P.3d 696, 726 (2007). Brown has served his five-year sentence. We cannot grant him effective relief. His appeal is moot. See State v. Kiese, 126 Hawai'i 494, 508, 273 P.3d 1180, 1194 (2012) (appeal from denial of motion to stay sentence was moot because sentence was satisfied during pendency of the appeal).

Brown counters that the *collateral consequences* and *public interest* exceptions to the mootness doctrine should be applied.

The collateral consequences exception applies if a litigant shows there is a reasonable possibility that prejudicial

⁶ HRS § 853-1 (2014) provides:

(b) The court may defer the proceedings for a period of time as the court shall direct but in no case to exceed the maximum sentence allowable[.]

Theft in the Second Degree is a class C felony. HRS § 708-831(2) (2014). The maximum sentence allowable is five years. HRS § 706-660(1)(b) (2014).

collateral consequences will occur, so that a decision in the case can afford the litigant practical relief in the future. Hamilton ex rel. Lethem v. Lethem, 119 Hawai'i 1, 8, 193 P.3d 839, 846 (2008).

Brown argues his conviction in this case could affect the conditions of his incarceration and decisions by the Hawaii Paroling Authority when he applies for parole in the Boinville Murder case. In light of the offenses for which he was convicted and the sentence he received in the Boinville Murder case, the chance that his conviction and sentence in this case would have future consequences for his imprisonment and possible parole is nothing "more than mere conjecture[.]" Id.

The factors for analyzing the *public interest* exception are: (1) the public or private nature of the question presented; (2) the desirability of an authoritative determination for future guidance of public officers; and (3) the likelihood of future recurrence of the question. Id. at 6-7, 193 P.3d at 844-45.

The issue in this appeal – setting aside a DANC plea after the deferral time has expired – is of a public nature. But a determination already exists. See State v. Kaufman, 92 Hawai'i 322, 330, 991 P.2d 832, 840 (2000) (holding that moving to set aside a deferred acceptance of guilty plea tolls the deferral period until the date the court rules on the motion). And, because of Brown's parallel involvement in the Boinville Murder case, it does not appear the specific circumstances of this case are likely to recur.

This appeal is dismissed as moot.

DATED: Honolulu, Hawai'i, October 6, 2026.

On the briefs:

William Bagasol,
for Defendant-Appellant
Stephen H. Brown.

Steven S. Alm,
Prosecuting Attorney,
Robert T. Nakatsuji,
Deputy Prosecuting Attorney,
for State of Hawai'i.

/s/ Katherine G. Leonard
Presiding Judge

/s/ Keith K. Hiraoka
Associate Judge

/s/ Sonja M.P. McCullen
Associate Judge