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IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

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STATE OF HAWAII, Plaintiff-Appellee,
v.
WAYNESLEY IKAIIKA KAUAKAHI, Defendant-Appellant

NO. CAAP-24-0000546

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT
(CASE NO. 5CPC-21-0000141)

OCTOBER 7, 2026

NAKASONE, CHIEF JUDGE, HIRAOKA AND MCCULLEN, JJ.

OPINION OF THE COURT BY NAKASONE, CHIEF JUDGE

This appeal concerns whether a sentencing court may impose sex offender registration under Hawaii Revised Statutes (**HRS**) Chapter 846E as a discretionary condition of probation on a defendant who was not subject to mandatory registration under that chapter. We hold that a sentencing court may not do so.

Defendant-Appellant Waynesley Ikaika Kauakahi (**Kauakahi**) appeals from the Circuit Court of the Fifth Circuit's¹ (**Circuit Court**) August 2, 2024 "Amended Judgment of Conviction and Probation Sentence" (**Probation Sentence**). On appeal, Kauakahi raises a single point of error, contending that the Circuit Court erred by ordering him "to register as a sex offender pursuant to HRS Chapter 846E as a special condition of his probation[,]" because (1) Chapter 846E does not authorize a court to "order sex offender registration in its discretion[,]" and (2) "no jury found beyond a reasonable doubt that the victims were minors." Because we resolve Kauakahi's appeal on his first argument, we do not address the second.

I. BACKGROUND

On July 14, 2021, Plaintiff-Appellee State of Hawai'i (**State**) charged Kauakahi via Indictment with two counts of third-degree sexual assault (**Sexual Assault Third Degree**) under HRS § 707-732(1)(b).² The charges alleged that, sometime between April 9, 2019 and April 9, 2020, Kauakahi subjected two victims, both younger than fourteen years old, to sexual contact. On August 2, 2021, Kauakahi pled not guilty.

On May 7, 2024, pursuant to a plea agreement, Kauakahi pled no contest to two amended counts of fourth-degree sexual assault (**Sexual Assault Fourth Degree**) under HRS § 707-733(1)(b).³ Under the plea agreement, Kauakahi consented to

¹ The Honorable Randal G.B. Valenciano presided.

² Under HRS § 707-732(1)(b) (2014), Sexual Assault Third Degree is committed when "[a] person . . . [k]nowingly subjects to sexual contact another person who is less than fourteen years old or causes such a person to have sexual contact with the person[.]" Sexual Assault Third Degree is a Class C felony. Id.

³ Under HRS § 707-733(1)(b) (2014 & 2023 Supp.), Sexual Assault Fourth Degree is committed when "[a] person . . . knowingly exposes the

being "subject to all relevant Sex Offender terms and conditions of sentencing, including, but not limited to obtaining a clinical discharge from the Sex Offender Treatment Program." The plea agreement did not explicitly mention sex offender registration.

On July 18, 2024, the Circuit Court sentenced Kauakahi to one year of HOPE probation with special conditions, including six months jail, participation in a sex offender treatment program, and a prohibition against contacting minors, but did not include a sex offender registration condition pursuant to HRS Chapter 846E.

HRS Chapter 846E deals with "Registration of Sex Offenders and Other Covered Offenders and Public Access to Registration Information." HRS § 846E-2 (2014 & 2023 Supp.) requires a "covered offender" to "register with the attorney general and comply with the provisions of this chapter for life or for a shorter period of time" as the chapter provides. A "covered offender" includes a "sex offender." HRS § 846E-1 (2014 & 2025 Supp.). A "sex offender" includes a person convicted of a "sexual offense." Id.

At the time of the 2024 sentencing hearing, a Sexual Assault Fourth Degree offense under HRS § 707-733(1)(b) was not included as a covered "sexual offense" under HRS § 846E-1 triggering sex offender registration. See HRS § 846E-1 (2023 Supp.). In 2025, however, HRS § 846E-1 was amended such that HRS § 707-733(1)(b) Sexual Assault Fourth Degree was included as a covered "sexual offense" that mandated registration, but was

person's genitals to another person under circumstances in which the actor's conduct is likely to alarm the other person or put the other person in fear of bodily injury[.]" Sexual Assault Fourth Degree is a misdemeanor. Id.

excluded "if the perpetrator is under the age of twenty-five at the time of the offense[.]"

At the July 18, 2024 sentencing hearing, both parties and the Circuit Court agreed that mandatory sex offender registration under HRS Chapter 846E did not apply to the Sexual Assault Fourth Degree offenses for which Kauakahi was convicted. The transcript reflects that the Circuit Court attempted to impose sex offender registration as a probation condition, but was informed by both Kauakahi and the State that it should not do so, as follows:

THE COURT: Okay. So I'm going to put him on HOPE probation as to Count One and Count Two, Sexual Assault in the Fourth Degree. Probation is for one year.

. . . .

[(reciting various probation conditions)]

You shall abide by any curfew, travel or leisure time restrictions imposed by the probation officer.

You shall register as a sex offender pursuant to HRS Chapter 846E --

[DEFENSE COUNSEL]: Your Honor, this is a non-registrable offense.

THE COURT: [(Deputy Prosecutor)].

[DEPUTY PROSECUTOR]: That's my understanding as well, Your Honor.

THE COURT: Okay. So that doesn't apply.

You shall comply with a service plan developed using current assessment tools.

You shall not own or possess any firearms or ammunition. If you have any firearms or ammunition, you must immediately turn them into the appropriate county police department.

The above record reflects the Circuit Court agreed that sex offender registration "doesn't apply," and did not impose it.

FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

On July 29, 2024, Kauakahi's probation officer filed a motion to modify the conditions of probation to include sex offender registration, stating as follows:

During the period of probation, it is requested that [Kauakahi]'s terms and conditions be modified to include the following:

☒ You shall register as a sex offender per HRS §846E.

The motion did not provide a reason or legal justification.

On July 31, 2024, Kauakahi filed a memorandum in opposition, arguing that "the legislature specifically excluded HRS 707-733(1)(b) from the sex offender registration requirement," and "there [was] not a sufficient factual basis to the conviction to order registration."

At the August 1, 2024 hearing on the probation officer's motion to add sex offender registration as a probation condition, the State agreed with Kauakahi's position that sex offender registration did not apply to Kauakahi's offenses, as follows:

THE COURT: [Defense counsel], anything else to add to your motion?

[DEFENSE COUNSEL]: Not to my written opposition, no.

THE COURT: Okay.

Actually, the motion was from probation. You did the opposition.

[Deputy Prosecutor], on behalf of the State, what is your position?

[DEPUTY PROSECUTOR]: Your Honor, State is not objecting to -- or we're actually siding -- excuse me -- with defense on this.

Our understanding when we made the plea offer, as well as during the sentencing is that this is not a registrable offense, Your Honor.

(Emphases added.)

The Circuit Court nevertheless granted the motion to modify Kauakahi's probation to add the sex offender registration condition, stating:

THE COURT: Okay. So just to let the attorneys know.

This went to the staff attorneys of the Supreme Court. And so -- because there was an issue of whether you need to register.

The recommendation is that [Kauakahi] needs to register. And even if it's not required, it's still at the discretion of the Court.

So the Court will grant the motion and modify and require [Kauakahi] to register as a sex offender.

The Circuit Court's August 2, 2024 Probation Sentence, which added probation condition "R" ("You shall register as a sex offender per HRS §846E"), provided no elaboration as to its reasoning. Kauakahi timely appealed.

II. STANDARD OF REVIEW

"When a defendant challenges a sentencing court's decision regarding the terms and conditions of his or her probation on appeal, the appellate court's inquiry is limited to reviewing the sentencing court's decision for an abuse of discretion." State v. Anzalone, 141 Hawai'i 445, 457, 412 P.3d 951, 963 (2018) (citations omitted).

III. DISCUSSION

A. While the issue presented on appeal is moot because the Probation Sentence containing the challenged sex offender registration condition has been revoked, the public interest exception applies.

In the July 2, 2025 Answering Brief and July 28, 2025 Reply Brief, the State and Kauakahi both reference a material procedural development that occurred after the April 23, 2025 Opening Brief was filed. The development was the Circuit

Court's revocation of the appealed-from August 2, 2024 Probation Sentence on May 23, 2025.

The record reflects that on May 23, 2025, during the pendency of this appeal, the Circuit Court revoked the Probation Sentence and resentenced Kauakahi to a full year in jail for each Sexual Assault Fourth Degree conviction in its "Order of Resentencing, Revocation of Probation" (**Resentencing Order**). The May 23, 2025 Resentencing Order again required him to "register as a sex offender per HRS §846E."⁴

Thus, the August 2, 2024 Probation Sentence from which Kauakahi appealed no longer exists, due to the May 23, 2025 Resentencing Order. The State's Answering Brief asserts that while the revocation of Kauakahi's original sentence under the appealed-from Probation Sentence renders this appeal moot, the public interest and capable-of-repetition-yet-evading-review (**CRER**) exceptions to the mootness doctrine should apply. In his Supplemental Brief, Kauakahi "agrees that the probation argument is moot." Kauakahi concurs with the State's request for this court to address the moot issue presented on the merits under the public interest or CRER exceptions.

Under the mootness doctrine, an appellate court "generally refrain[s] from deciding a case that has lost its character as a present, live controversy, and in which the reviewing court can no longer grant effective relief." Kia'i Wai O Wai'ale'ale v. Bd. of Land & Nat. Res., 157 Hawai'i 303, 315, 576 P.3d 816, 828 (2025) (citation omitted). "The doctrine seems appropriate where events subsequent to the judgment of the

⁴ Upon review and consideration of the parties' Supplemental Briefs filed on September 23, 2026, we do not address the sex offender registration ordered with Kauakahi's term of imprisonment in the May 23, 2025 Resentencing Order, which is not properly before us in this appeal.

trial court have so affected the relations between the parties that the two conditions for justiciability relevant on appeal - adverse interest and effective remedy - have been compromised." Hamilton ex rel. Lethem v. Lethem, 119 Hawai'i 1, 5, 193 P.3d 839, 843 (2008) (quoting Lathrop v. Sakatani, 111 Hawai'i 307, 313, 141 P.3d 480, 486 (2006)).

Here, while the controversy of the challenged imposition of sex offender registration as a probation condition for a non-covered offender is no longer live because of the revocation of that sentence, the public interest exception to the mootness doctrine applies. "In determining whether the public interest exception applies, this court considers: (1) the public or private nature of the questions presented, (2) the desirability of an authoritative determination for future guidance of public officers, and (3) the likelihood of future recurrence of the questions." Kia'i Wai O Wai'ale'ale, 157 Hawai'i at 317, 576 P.3d at 830 (citation and brackets omitted).

Applying these three factors here, we conclude that (1) the question presented regarding the imposition of a sex offender registration probation condition on a defendant who is not a covered offender under HRS Chapter 846E is of a public nature; (2) resolution of this controversy on the merits will provide guidance to public officers; and (3) the question is one that may recur. See id. We address the issue presented in this appeal under the public interest exception to the mootness doctrine.

B. Sex offender registration cannot be imposed as a probation condition where a defendant is not a covered offender under HRS § 846E-1.

The parties' appellate briefs reflect their agreement that Kauakahi is not a "covered offender" under HRS § 846E-1 and

therefore not subject to mandatory sex offender registration. The parties' disagreement turns on whether a trial court may impose sex offender registration as a discretionary condition of probation for a non-covered offender.

Kauakahi argues that the Circuit Court "had no discretion to order [him] to register as a sex offender as a condition of probation[,]" reasoning that the "standardized and comprehensive" nature of HRS Chapter 846E's "statewide scheme" precludes its discretionary application, and that HRS Chapter 846E "reflects the legislature's intentions concerning what categories of offenders should be subjected to the significant burdens of the sex offender registry." Kauakahi relies on the "well-known rule of statutory construction that where there is a conflict between a general provision and a specific provision, the specific provision prevails[,]" citing Ho'omoana Found. v. Land Use Comm'n, 152 Hawai'i 337, 344, 526 P.3d 314, 321 (2023).

The State responds that under HRS § 706-624(2) (t) (2014 & 2024 Supp.), a sentencing court is authorized to discretionarily impose "other reasonable conditions" of a probation sentence "to the extent that the conditions are reasonably related" to the HRS § 706-606 sentencing factors and "to the extent that the conditions involve only deprivations of liberty or property as are reasonably necessary" for such purposes. Despite the State's acknowledgement that "a number of appellate courts in other states have held that a court lacks authority" to order a non-covered offender to register as a sex offender as a probation condition, the State "[n]evertheless . . . urges this court to hold that sentencing courts have the discretion to order a defendant to register pursuant to HRS Chapter 846E, when the record indicates that such registration is warranted for the particular defendant."

1. **Kauakahi cannot be ordered to register as a sex offender under the general probation conditions statute of HRS § 706-624, where he is not a covered offender under the specific HRS Chapter 846E statutes defining who is subject to sex offender registration.**

"[W]here there is a 'plainly irreconcilable' conflict between a specific statute and a general statute concerning the same subject matter, the specific statute will be favored." State v. Spencer, 68 Haw. 622, 624, 725 P.2d 799, 800 (1986) (citation omitted). "It is the generally accepted rule of statutory construction that unless a legislative intention to the contrary clearly appears, special or particular provisions control over general provisions, terms or expressions." Ho'omoana Found., 152 Hawai'i at 344, 526 P.3d at 321 (citation omitted).

Hawai'i has a specific statute for sex offender registration, HRS § 846E-2, that limits registration to "covered offenders," which excludes Kauakahi's convicted offense. See HRS § 846E-1. HRS Chapter 846E also includes a statute specifically requiring judges, inter alia, who release a covered offender following sentencing or probation, to explain the duty to register and consequences of such failure "to the covered offender," and to obtain "all of the registration information required by this chapter" "from the covered offender." HRS § 846E-4 (2014).

Hawai'i also has general sentencing statutes under HRS Chapter 706, entitled "Disposition of Convicted Defendants." Probation is one of the authorized dispositions for convicted defendants. HRS § 706-605(1)(a) (2016 & 2023 Supp.). HRS § 706-624 sets forth "Conditions of probation" for a probation sentence. HRS § 706-624 sets forth a list of "[m]andatory

conditions" of probation that a court must impose under subsection (1), and a list of "[d]iscretionary conditions" a court "may" impose under subsection (2). Seven mandatory conditions are set forth in subsection (1)(a) through (1)(g), and nineteen specific discretionary conditions are set forth in subsection (2)(a) through (2)(s). Subsection (2) further allows unspecified discretionary conditions in subsection (2)(t), for "other reasonable conditions as the court may impose." The mandatory and discretionary conditions set forth in HRS § 706-624 apply generally to all probation sentences.

Here, the specific sex offender registration statute, HRS § 846E-1, defines "covered offender," and excludes Kauakahi's convicted offense. HRS § 846E-4 specifically prescribes how registration information is gathered from covered offenders. It is plainly evident that sex offender registration under HRS Chapter 846E is a specific and comprehensive statutory scheme. The general probation conditions statute, HRS § 706-624, cannot be read to subject persons beyond the specific "covered offenders" set forth in HRS § 846E-1 to sex offender registration. See Spencer, 68 Haw. at 624, 725 P.2d at 800; Ho'omoana Found., 152 Hawai'i at 344, 526 P.3d at 321. Because sex offender registration under HRS Chapter 846E is not authorized for a non-covered offender, it is not a probation condition that could permissibly be imposed.

Our conclusion -- that sex offender registration may not be imposed as a probation condition on a non-covered offender -- is consistent with the majority of other jurisdictions that have examined this question. Cases in Alaska, California, Indiana, Montana, and New Mexico have similarly held that a sentencing court does not have authority to impose sex offender registration as a discretionary condition

of probation for an offense not enumerated in the sex offender registration statutes, absent an explicit grant of such authority. See, e.g., Whitehead v. State, 985 P.2d 1019, 1021 (Alaska Ct. App. 1999) (holding that Alaska's sentencing and probation statutes "should not [be] construe[d] . . . to allow sentencing judges to impose sex offender registration as a condition of probation when the legislature has not expressly authorized sentencing courts to exercise this power"); In re Bernardino S., 5 Cal. Rptr. 2d 746, 752 (Cal. Ct. App. 1992) (concluding that "the trial court lacked the power to impose" sex offender registration on a defendant because under the then-existing law, "the Legislature adopted a classification which exempted [the defendant] from the registration requirement"); Straw v. State, 133 N.E.3d 765, 768 (Ind. Ct. App. 2019) (holding that "[a] trial court is without authority to order a person who has not been convicted of one of the offenses set forth in the statute to register as a sex offender"); State v. Collins, 528 P.3d 1106, 1117 (Mont. 2023) (holding that "the District Court did not have the authority to impose [sex offender] registration as a condition of his sentence" because "courts do not have the power to impose a criminal sentence unless authorized by a specific grant of statutory authority"; State v. Williams, 141 P.3d 538, 541 (N.M. Ct. App. 2006) (holding that "the district court could not use [sex offender registration] as a punishment tool in its sentence" because the defendant "was not convicted of a sex offense" and therefore "the district court could not statutorily require [him] to register"); but see, Loya v. State, 740 S.E.2d 382, 385 (Ga. Ct. App. 2013) (concluding that "a trial court may order sex offender registration for felony public indecency as a condition of probation even though such registration is not required by

the registration statute[,]" reasoning that "appellate courts will approve 'any reasonable condition imposed for probation of sentence by the trial court in the absence of express authority to the contrary'").

2. The State's reliance on cases upholding the imposition of sex offender *treatment* as a probation condition is inapt.

The State asserts that State v. Solomon, 107 Hawai'i 117, 111 P.3d 12 (2005) and State v. Bailey, No. CAAP-14-0000386, 2015 WL 405742 (Haw. App. Jan. 30, 2015) (SDO) "instruct that courts have wide discretion in imposing sex offender treatment as a condition of probation . . . even if the defendant was *not* convicted of a sexual offense." In Solomon, the supreme court upheld a trial court's imposition of sex offender treatment as a condition of probation on a defendant who pled guilty to abuse of a family or household member and had a history of sexual misconduct, 107 Hawai'i at 131, 111 P.3d at 26; in Bailey, 2015 WL 405742, at *4-5, this court likewise upheld a trial court's imposition of sex offender treatment as a condition of probation on a defendant who pled no contest to second-degree assault, a non-sexual offense, but whose conduct involved improper sexual behavior. The State's argument rests on an incorrect premise that the imposition of sex offender **registration** as a discretionary condition of probation is analogous to a probation condition of sex offender **treatment**. Such conflation is inapt.

First, sex offender *treatment* and sex offender *registration* are governed by two different statutory schemes -- HRS Chapter 353E and Chapter 846E, respectively. HRS § 353E-1 (2015 and 2024 Supp.) establishes "the statewide integrated sex offender treatment program for the treatment of adult sex

offenders in the custody of the State[,]" and specifies the program's responsibilities. HRS Chapter 353E contains no provision equivalent to HRS § 846E-2 mandating sex offender *treatment* for certain classes or types of offenses. Second, courts imposing a sentence are authorized to impose sex offender *treatment* -- a type of mental health treatment -- as a discretionary condition of probation under HRS § 706-624(2)(j) ("The court may provide, as further conditions of a sentence of probation" that the defendant "[u]ndergo available medical or mental health assessment and treatment[.]"). No similar analogue for the imposition of sex offender *registration* exists under the sentencing statutes in HRS Chapter 706. Finally, the imposition of sex offender *treatment* on an offender is not limited to a statutorily defined class of "covered offenders," as the sex offender *registration* scheme in HRS Chapter 846E does. The State's argument lacks merit.

3. The Circuit Court exceeded the scope of its discretion in imposing sex offender registration as a probation condition on a non-covered offender like Kauakahi.

"In general, to constitute an abuse it must appear that the court clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant." State v. Canosa, 152 Hawai'i 145, 154, 523 P.3d 1059, 1068 (2023). The exercise of discretion in this case did not comport with the applicable law of HRS § 846E-2, which excluded Kauakahi as a covered offender subject to the sex offender registration requirement. The Circuit Court's imposition of sex offender registration as a probation condition in this case thus disregarded the applicable law under HRS Chapter 846E, and exceeded the permissible scope

of its sentencing discretion. See Anzalone, 141 Hawai'i at 457, 412 P.3d at 963.

IV. CONCLUSION

For the foregoing reasons, we reverse special condition "R" in the August 2, 2024 Probation Sentence, entered by the Circuit Court of the Fifth Circuit.

On the briefs:	/s/ Karen T. Nakasone Chief Judge
Sara K. Haley, Deputy Public Defender, for Defendant-Appellant.	/s/ Keith K. Hiraoka Associate Judge
Tracy Murakami, Deputy Prosecuting Attorney County of Kaua'i, for Plaintiff-Appellee.	/s/ Sonja M.P. McCullen Associate Judge