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NOS. CAAP-25-0000071 and CAAP-25-0000072

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

CAAP-25-0000071

STATE OF HAWAII, Plaintiff-Appellee,

v.

AILAO TUALAULELEI, Defendant-Appellee, and  
SHAKA BAIL LLC, Real Party in Interest-Appellant.

(CR. NO. 1CPC-22-0001379)

AND

CAAP-25-0000072

STATE OF HAWAII, Plaintiff-Appellee,

v.

AILAO TUALAULELEI and KIANA H. MEDEIROS, Defendants-Appellees,  
and SHAKA BAIL LLC, Real Party in Interest-Appellant.

(CR. NO. 1CPC-23-0000744)

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT

MEMORANDUM OPINION

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

Surety-Appellant **Shaka** Bail LLC appeals from the  
Circuit Court of the First Circuit's January 10, 2025 "Findings  
of Fact, Conclusions of Law and Order Denying Shaka Bail's  
Motion to Set Aside Judgment of Bail Forfeiture" in 1CPC-22-

0001379 and 1CPC-23-0000744 (**Denial Orders**).<sup>1</sup> (Formatting altered.)

On appeal, Shaka contends (1) service was improper, (2) the Hawai'i Rules of Civil Procedure (**HRCP**) applied, (3) good cause existed, and (4) its due process rights were violated. We affirm.

## I. BACKGROUND

### A. Factual Background

In Case No. 1CPC-22-0001379, Plaintiff-Appellee the **State** of Hawai'i charged Defendant-Appellee Ailao **Tualaulelei** with Unauthorized Control of a Propelled Vehicle in the First Degree and Promoting a Dangerous Drug in the Third Degree. Shaka posted the \$6,000.00 bail bond, insured by **Universal** Fire & Casualty Insurance Co.

In Case No. 1CPC-23-0000744, the State charged Tualaulelei with Burglary in the Second Degree. Shaka posted the \$5,000.00 bail bond, insured by Universal.

By executing the bail bond, Shaka ensured the defendant's presence at court or payment of the bond:

KNOW ALL MEN BY THESE PRESENTS:

THAT THE UNDERSIGNED SURETY, OR SURETIES, ASSURETY, HEREBY UNDERTAKE THAT THE SAID DEFENDANT WILL APPEAR AND ANSWER ALL CHARGES MENTIONED IN WHATEVER COURT IT MAY BE PROSECUTED WITHIN THE STATE OF HAWAII, AND WILL AT ALL TIMES BE AMENABLE TO THE ORDERS AND PROCESS OF THE COURT, AND WILL APPEAR FOR JUDGEMENT, AND RENDER SELF IN EXECUTION THEREOF OR FAILURE TO PERFORM EITHER OF THESE CONDITIONS

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<sup>1</sup> The Honorable Clarissa Y. Malinao presided.

WILL PAY TO THE STATE OF HAWAII, AS PROVIDED IN SECTIONS  
804-511 [sic], HAWAII REVISED STATUTES.

(Emphases added.)

## B. Procedural Background

Tualalaulelei failed to appear in court in both cases on November 13, 2024. As a result, the circuit court issued a bench warrant for Tualalaulelei's arrest. The next day, on November 14, 2024, the circuit court entered its "Judgment and Order of Forfeiture of Bail Bond" (**Forfeiture Judgment**) in both cases. (Formatting altered.)

The State filed a proof of service of the Forfeiture Judgment upon Universal with the circuit court, indicating service was by certified mail. The proof of service showed the postmark date as November 18, 2024, and the receipt date as November 25, 2024.

Tualalaulelei was arrested on December 5, 2024, and a **Return of Service** for the bench warrant was filed the next day.

Thirty-three days after the receipt date, on December 28, 2024, Shaka moved to set aside the Forfeiture Judgment (**Motion to Set Aside** or **Motion**). The circuit court denied Shaka's Motion as untimely.

Shaka appealed, and we consolidated the two cases.

## II. DISCUSSION

We begin with Shaka's argument that good cause existed to set aside the Forfeiture Judgment, because Tualalaulelei was

returned to custody before the time period in which Shaka could move to set aside the Forfeiture Judgment expired. Shaka's remaining arguments regarding the adequacy of service, the applicability of the Hawai'i Rules of Civil Procedure, and due process are either waived or without merit.

**A. No Abuse of Discretion in Denying Untimely Motion to Set Aside Forfeiture Judgment**

Shaka argues that good cause existed to set aside the Forfeiture Judgment. In particular, Shaka appears to argue that good cause existed because Tualalelei was returned to custody before the thirty-day time period to set aside the Forfeiture Judgment expired. Shaka posits that "[r]igidly applying procedural formalities to deny such relief frustrates the statute's equitable purpose."

By failing to ensure the defendant's appearance, a bond is forfeited. State v. Nelson, 140 Hawai'i 123, 132 n.13, 398 P.3d 712, 721 n.13 (2017). Under Hawai'i Revised Statutes (HRS) § 804-51 (Supp. 2023), when a bond is forfeited, the court must immediately enter judgment and execute that judgment thirty days after giving notice of the entry of judgment, unless a motion showing good cause is filed within those thirty days:

**§804-51 Procedure.** Whenever the court, in any criminal cause, forfeits any bond or recognizance given in a criminal cause, the court shall immediately enter up judgment in favor of the State and against the principal or principals, surety or sureties, and surety insurer or surety insurers on the bond, jointly and severally, for the full amount of the penalty thereof, and shall cause execution to issue thereon immediately after the expiration of thirty days from the date that notice is given via personal service

or certified mail, return receipt requested, to the surety or sureties or the surety insurer or surety insurers on the bond, of the entry of the judgment in favor of the State, unless before the expiration of thirty days from the date that notice is given to the surety or sureties or the surety insurer or surety insurers on the bond of the entry of the judgment in favor of the State, a motion or application of the principal or principals, surety or sureties, surety insurer or surety insurers, or any of them, showing good cause why execution should not issue upon the judgment, is filed with the court.

(Emphases added.)

In other words, a surety either guarantees a defendant's appearance in court or it forfeits the bond. And should the bond be forfeited, a forfeiture judgment is entered and the surety is given an opportunity to stay execution of the forfeiture judgment through the "unless" clause.

The "unless" clause provides a conditional exception to the mandatory and immediate execution of the forfeiture judgment at the expiration of thirty days. The condition requires, "before the expiration of thirty days from" receiving notice of the judgment, a "motion or application" "showing good cause" to be "filed with the court." State v. Vaimili, 131 Hawai'i 9, 15, 313 P.3d 698, 704 (2013) ("[O]nce a bond is forfeited pursuant to HRS § 804-51, a surety has thirty days from the time it receives notice of forfeiture to set aside the forfeiture judgment[.]").

HRS § 804-51 provides no further remedy to stay execution of a forfeiture judgment once the thirty days in the "unless" clause expires. State v. Deplae, 158 Hawai'i 225, 590

P.3d 354, No. CAAP-24-0000492, 2026 WL 1683929, at \*2 (App. June 10, 2026) (SDO) ("A circuit court is 'without power to consider' a motion to set aside a forfeiture that is 'not filed within the time limit imposed by HRS § 804-51[.]'" (citation omitted)).

Here, Shaka guaranteed Tualalelei would appear at court or it would forfeit the bond. Shaka did not honor its guarantee. Because Tualalelei did not appear in court, the circuit court entered the Forfeiture Judgment.

Substantial evidence in the record supports the challenged finding that notice of the Forfeiture Judgment was received on November 25, 2024, as the State provided a copy of the signed and dated return receipt.

Any motion to set aside the Forfeiture Judgment was to be filed "before the expiration of thirty days" – here, December 25, 2024. Because December 25 was a holiday, Shaka's Motion must have been "filed with the court" by December 26, 2024. HRS §§ 1-29, -32 (2009). Shaka, however, filed its Motion on December 28, 2024, two days after the deadline. Shaka's Motion did not comply with time requirements set forth in HRS § 804-51.

Shaka nonetheless argues that, because Tualalelei was in custody before the thirty days expired, good cause existed for staying execution of the Forfeiture Judgment.

In State v. Camara, the Hawai'i Supreme Court reiterated that a forfeiture judgment shall be executed upon the expiration of thirty days, "unless the principal or the surety (or both) files a motion or application 'showing good cause why execution should not issue upon the judgment,' HRS § 804-51, prior to the expiration of the thirty-day search period." 81 Hawai'i 324, 330, 916 P.2d 1225, 1231 (1996) (second emphasis added).

Furthermore, "'good cause why execution should not issue upon the judgment' of forfeiture may be satisfied by the defendant, prior to the expiration of the thirty-day search period: (1) providing a satisfactory reason for his or her failure to appear when required; or (2) surrendering or being surrendered." Id. at 330, 916 P.2d at 1231. "Surrendering" means "both voluntary and involuntary surrender by the principal to law enforcement officials[.]" Id. at 332, 916 P.2d at 1233.

The supreme court explained that "returning the bond to the surety, less costs, is consistent with the general principle that the primary purpose of bail is not to punish the defendant or surety, . . . but to secure the presence of the defendant to answer the charges against him or her." Id. at 332, 916 P.2d at 1233. Accordingly, "if the State regains custody of the defendant prior to the expiration of the thirty-day search period and the surety receives partial return of its

bond, the primary purpose of bail would be met. To hold otherwise would result in punishment of the surety and possibly of the defendant." Id.

On December 6, 2024, the Return of Service was filed with the court, which was before the expiration of thirty days. And that Return of Service showed Tualualelei was arrested on December 5, 2024, which was also before the expiration of thirty days. Based on Camara, the Return of Service could have provided a basis for good cause in a motion or application as it showed Tualualelei was in custody, i.e., surrendered before the expiration of the thirty days.

However, Shaka waited twenty-three days after Tualualelei was arrested, and twenty-two days after the Return of Service was filed, to move to set aside the Forfeiture Judgment, resulting in the Motion being two days late. In other words, Shaka simply sat on its rights.

At some point, there must be finality in a judgment. In re Peoro, 793 F.2d 1048, 1052 (9th Cir. 1986) ("One of the fundamental requirements of a judicial system is finality."). Here, the legislature set the point of finality by plainly stating that the judgment shall be executed "immediately after the expiration of thirty days." HRS § 804-51.

It is not for this court to expand this period of time, and we leave it to the legislature to amend HRS § 804-51 if it did not intend this result.

Consistent with Camara, which reiterated that a motion or application showing good cause must be made "prior to the expiration of the thirty-day search period," we hold that the circuit court did not abuse its discretion by denying Shaka's Motion. See 81 Hawai'i at 330, 916 P.2d at 1231; U.S. v. Amwest Sur. Ins. Co., 54 F.3d 601, 602 (9th Cir. 1995) ("We review a district court's decision to set aside or remit the forfeiture of an appearance bond for abuse of discretion.").

**B. Shaka's Remaining Arguments Are Waived or Without Merit**

**1. Service**

Shaka contends service was improper. In its opening brief, Shaka acknowledges that Darci **Todd** was Universal's secretary and that Todd signed the return receipt on November 25, 2024, but argues that it "never agreed that . . . Todd was its agent[.]" Shaka then argues that, under HRS § 431:2-205 (2019), the State failed to serve notice upon the insurance commissioner.

Shaka, however, fails to point to where in the record it raised these arguments before the circuit court. Shaka argued, both in its Motion to Set Aside and at the hearing, that its Motion was timely because it had until December 30, 2024 to

file its Motion under Hawai'i Rules of Penal Procedure Rule 45(d) and that good cause existed.

Shaka made no argument regarding Todd or HRS § 431:2-205, and we need not consider unpresented arguments. See HRS § 641-2 (2016) ("The appellate court . . . need not consider a point that was not presented in the trial court in an appropriate manner."); Hawaii Ventures, LLC v. Otaka, Inc., 114 Hawai'i 438, 500, 164 P.3d 696, 758 (2007) ("As a general rule, if a party does not raise an argument at the circuit court level, that argument will be deemed to have been waived on appeal[.]" (citation modified)).

Thus, we deem these arguments waived.

## **2. HRCP Does Not Apply**

Shaka next contends the circuit court should have applied the rules of civil procedure to afford HRCP Rule 60(b) relief. But HRCP Rule 81(a)(8) provides that the HRCP does not apply to "[p]roceedings for the forfeiture of bonds." Vaimili, 131 Hawai'i at 14, 313 P.3d at 703 (reiterating that "HRCP Rule 81(a) provides that the rules of civil procedure do not apply to bond forfeiture proceedings."). Thus, the HRCP does not apply in the instant case.

Shaka then argues that the circuit court should have applied the HRCP by invoking HRCP Rule 81(h), which provides, "[i]n any proceeding in the land court or listed in subdivision

(a) of Rule 81 the court may by order direct that any one or more of these rules, not otherwise applicable to said proceeding pursuant to this Rule 81, shall be applicable to said proceeding." See State v. Nelson, 139 Hawai'i 147, 165, 384 P.3d 923, 941 (App. 2016) (explaining "the circuit court properly declined to act under HRCF Rule 81(h) to order any civil procedure rule, particularly HRCF Rule 60(b), applicable to the instant bail forfeiture proceedings").

But Shaka does not point to where in the record it requested the circuit court apply HRCF Rule 81(h). Thus, we deem this argument waived.

### **3. Due Process**

Finally, Shaka contends it was denied due process. Shaka argues the statute is overbroad and the circuit court's "interpretation of HRS § 804-51 offers no mechanism for judicial consideration of good faith, mistake, or the actual recovery of the defendant." Shaka argues "the statute fails rational basis review."

Shaka fails to show where in the record it raised this argument before the circuit court. See State v. Biton, 158 Hawai'i 220, 590 P.3d 349, No. CAAP-25-0000480, 2026 WL 1481525, at \*2 (App. May 27, 2026) (SDO) (determining the argument that HRS § 804-51 fails rational basis review was waived because it

was not raised before the circuit court). This argument is also waived.

### **III. CONCLUSION**

Based on the foregoing, we affirm the circuit court's January 10, 2025 Denial Orders.

DATED: Honolulu, Hawai'i, October 13, 2026.

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|------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|
| On the briefs:                                                                                                         | /s/ Katherine G. Leonard<br>Presiding Judge |
| Michael C. Carroll,<br>Keri Ann N. Yatogo,<br>(Lung Rose Voss & Wagnild),<br>for Real Party in Interest-<br>Appellant. | /s/ Clyde J. Wadsworth<br>Associate Judge   |
| Dean A. Soma,<br>Steve A. Bumanglag,<br>Chad K.L. Au,<br>Deputy Attorneys General,<br>for Plaintiff-Appellee.          | /s/ Sonja M.P. McCullen<br>Associate Judge  |