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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)

ORDER DENYING MOTION FOR RECONSIDERATION
(By: Nakasone, Chief Judge, Hiraoka, Guidry, JJ.)

Upon consideration of Defendant-Appellant-Appellant Tomas Alday-Morales's (**Alday-Morales**) October 2, 2026 "Motion for Reconsideration" (**Motion**) of the Summary Disposition Order (**SDO**) filed on September 22, 2026, pursuant to Hawai'i Rules of Appellate Procedure (**HRAP**) Rule 40, and the record and files herein, it appears that:

1. This court concluded in the SDO that "Alday-Morales's requested 'resentencing before a different judge' [was] not supported by any argument or authority" and was

therefore waived under HRAP Rule 28(b)(7). State v. Alday-Morales, No. CAAP-25-0000823, 2026 WL 2836930, at *4 (Haw. App. Sep. 22, 2026) (SDO).

2. The Motion argues that the Opening Brief's (**OB**) citation to State v. Carvalho, followed by a parenthetical, adequately supported Alday-Morales's requested resentencing before a different judge. The OB at page 8 pertinently stated:

As a result, this Court must vacate the judgment and sentence imposed, and remand the case for resentencing before a different judge. State v. Carvalho, 90 Hawai'i 280, 288, 978 P.2d 718, 726 (1999) (remanding to a different judge after the trial court used an improper sentencing procedure).

No additional argument was made beyond the above in the OB. The Motion requests that this court grant reconsideration to amend the SDO by remanding this case for resentencing before a different circuit court judge.

3. While Alday-Morales is correct that this court overlooked his Carvalho citation, see HRAP Rule 40(b), the OB presented no argument as to why the relief granted in Carvalho should apply here. The OB did not explain how the Circuit Court's insufficient articulation of its rationale for each consecutive sentence was analogous to Carvalho, in which resentencing before a different judge was ordered on remand because of the sentencing court's violation of the defendant's "right of presentence allocution." 90 Hawai'i at 286, 978 P.2d at 724. See HRAP Rule 28(b)(7).

4. The purpose of a motion for reconsideration "is to allow the parties to present new evidence and/or arguments that could not have been presented . . . earlier." Chen v. Mah, 146 Hawai'i 157, 172, 457 P.3d 796, 811 (2020) (citation omitted). "Reconsideration is not a

device to relitigate old matters or to raise arguments or evidence that could and should have been brought during the earlier proceeding." Id. (citation omitted).

5. It appears that the Motion is raising new arguments that were not made during briefing. The State's Answering Brief (**AB**) responded extensively to the OB's request for resentencing before a different judge, arguing that no "unusual circumstances" or "bias" was shown to warrant a remand to a different judge. The AB also noted that recent precedent of State v. Bunag, 158 Hawai'i 122, 128, 587 P.3d 697, 703 (2026), was "closely analogous to the instant case" because the sole issue on appeal was the sentencing court's "insufficient rationale for consecutive sentencing," and the court remanded for resentencing before the same judge despite the defendant's request on certiorari for a different sentencing judge.

6. Alday-Morales did not submit a Reply Brief (**RB**) in response to approximately four pages of argument made in the AB on this issue. We conclude the Motion does not present argument that "could not have been presented" during the earlier briefing process and "could and should have been brought" to this court's attention in a RB. Chen, 146 Hawai'i at 172, 457 P.3d at 811.

7. In any event, even if not waived, Alday-Morales's contention that resentencing before a different judge is warranted lacks merit, where the Hawai'i Supreme Court remanded for resentencing before the same judge in analogous recent cases of Bunag, 158 Hawai'i 122, 587 P.3d 697 and State v. Bautista, 153 Hawai'i 284, 535 P.3d 1029 (2023).

IT IS HEREBY ORDERED that the Motion is denied.

DATED: Honolulu, Hawai'i, October 12, 2026.

/s/ Karen T. Nakasone
Chief Judge

/s/ Keith K. Hiraoka
Associate Judge

/s/ Kimberly T. Guidry
Associate Judge