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NO. CAAP-25-0000881

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
TYRUS J DELOS REYES, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT
(CASE NO. 5CPC-22-0000232)

SUMMARY DISPOSITION ORDER

(By: Hiraoka, Presiding Judge, Wadsworth and Guidry, JJ.)

Tyrus **Delos Reyes** appeals from the ***Order of Resentencing*** *Revocation of Probation* entered by the Circuit Court of the Fifth Circuit.¹ We vacate and remand for resentencing because Delos Reyes received ineffective assistance of counsel.

Delos Reyes pleaded no contest to Promoting a Dangerous Drug in the Third Degree. A *Judgment Guilty Conviction and Probation Sentence* was entered on July 25, 2024. Delos Reyes was sentenced to four years probation and placed in the HOPE program.

On September 23, 2025, the State filed a *Motion for Modification or Revocation of the Terms and Conditions of Probation and for Issuance of a Bench Warrant*. It alleged that Delos Reyes had tested positive for methamphetamine on September 11, 2025; he was unemployed; attempts to contact him had been unsuccessful; and his whereabouts were unknown. A *HOPE Violation Report* was also filed on September 23, 2025.

The resentencing hearing was held on November 17, 2025. The Order of Resentencing was entered that day. Delos Reyes was

¹ The Honorable Michael K. Soong presided.

resentenced to five years in prison with credit for time served. This appeal followed.

Jurisdiction

The State points out that Delos Reyes's notice of appeal was not timely filed. A notice of appeal from the Order of Resentencing was due on December 17, 2025. Hawai'i Rules of Appellate Procedure (**HRAP**) Rule 4(b)(1). Delos Reyes's appellate counsel, the Office of the Public Defender (**OPD**), filed it on December 19, 2025 – two days late.

We will review an untimely appeal on the merits "when defense counsel has inexcusably or ineffectively failed to pursue a defendant's appeal from a criminal conviction in the first instance." State v. Knight, 80 Hawai'i 318, 323, 909 P.2d 1133, 1138 (1996) (cleaned up).

Delos Reyes's former attorney Craig A. **De Costa** orally moved to withdraw during the November 17, 2025 resentencing hearing. The circuit court orally granted the motion and directed De Costa to prepare an order; Delos Reyes was not referred to OPD. De Costa did not submit a proposed order until December 31, 2025, after the deadline to appeal the Order of Resentencing had passed. The *Order Granting Oral Motion to Withdraw as Counsel for Defendant* was entered on January 2, 2026. The order did not appoint OPD as substitute counsel.

We entered an order to show cause why Delos Reyes's appeal should not be dismissed for lack of jurisdiction. OPD responded with a declaration. It appears Delos Reyes intended to appeal from the Order of Resentencing. De Costa remained Delos Reyes's attorney of record until the written order granting his oral motion to withdraw was entered on January 2, 2026. De Costa inexcusably or ineffectively failed to file a notice of appeal by December 17, 2025. We have jurisdiction over Delos Reyes's appeal.

Discussion

Delos Reyes states a single point of error: De Costa "was ineffective by declining the circuit court's offer of more

time for Delos Reyes to gain acceptance into a substance abuse treatment program and remain on probation."²

Delos Reyes's ineffective assistance of counsel claim was first made on appeal. We may consider it de novo "if the record is sufficiently developed to determine whether there has been ineffective assistance of counsel." State v. Salavea, 147 Hawai'i 564, 575, 465 P.3d 1011, 1022 (2020) (cleaned up). First, Delos Reyes "must show that there were specific errors or omissions reflecting counsel's lack of skill, judgment, or diligence." Id. at 576, 465 P.3d at 1023. Second, he "must establish that these errors or omissions resulted in either the withdrawal or substantial impairment of a potentially meritorious defense." Id. He need only show "a possible impairment of a potentially meritorious defense"; he need not "show the impairment was probable nor prove that [he] suffered actual prejudice." Id.

The State's motion to revoke HOPE probation was heard on November 4, 2025. Delos Reyes admitted the allegations in the motion. The circuit court found he failed to complete a material term and condition of his probation. Resentencing or disposition was set for November 17, 2025.

Delos Reyes contends that the circuit court offered to give him time to get accepted into a rehabilitation program, but De Costa turned it down without consulting with him. The State agrees.

When the prosecution concedes error, it is incumbent on the appellate court first to ascertain that the confession of error is supported by the record and well-founded in law and second to determine that such error is properly preserved and prejudicial. In other words, a confession of error by the prosecution is not binding upon an appellate court, nor may a conviction be reversed on the strength of the prosecutor's official action alone.

State v. Solomon, 107 Hawai'i 117, 126, 111 P.3d 12, 21 (2005) (formatting altered).

² De Costa was served with the opening brief, consistent with HRAP Rule 28(a). He has not filed a response.

The transcript of the resentencing hearing shows this exchange:

THE COURT: You -- you know, [counsel], before we actually get to the resentencing. I -- I thought you were taking the time to try and get him into a program. And, you know, with his history of the amount of violations, you know, **the only way that I would reconsider probation again is if he was accepted in a program.** I wouldn't release him time served or -- or even, you know, probation and jail. I think either he's in a program or he's looking at the open term.

So **I don't know if you want time to try** and.

MR. DeCOSTA: I'm -- I'm sorry, your Honor. I thought it was -- the Court asked for resentencing I thought that would give me time to speak to Mr. Delos Reyes about what he wanted to do.

As far as getting in applications and so forth, **that's not something that I really do.** That is something that I think the social workers at the jail would do, but they won't do it if he's presentencing is my understanding.

Most of the programs -- I've tried this before and most of the programs go on like a release date or assurances that the Court will release him to it.

So what I asked for when he was initially sentencing [sic], and I would ask for that now and I understand that's not the judge's inclination, but would be if you're going to put him back, I would ask you put him back, if that's the Court's desire to put him back on probation, and say that if he gets accepted into a program, a residential program, if that's what the Court want [sic] to see, that he can be released into the program after a certain amount of days.

THE COURT: All right. We'll proceed with the resentencing then.

(emphasis added).

Under the circumstances, we conclude De Costa's failure to consult with Delos Reyes about the circuit court's offer to give him time to apply for acceptance into a program was a specific error and omission reflecting De Costa's lack of skill, judgment, or diligence. Salavea, 147 Hawai'i at 576, 465 P.3d at 1023. Even if the scope of De Costa's retention did not include helping Delos Reyes apply to rehabilitation programs, he could have requested a continuance of the resentencing hearing and referred Delos Reyes to another attorney, or a non-profit, for help. Because the circuit court appeared willing to give Delos Reyes time to seek acceptance into a program, it is

possible that De Costa's error and omission substantially impaired Delos Reyes's potentially meritorious defense to the five-year prison term that was imposed. Id.

We conclude that Delos Reyes received ineffective assistance of counsel. We vacate the November 17, 2025 Order of Resentencing and remand for resentencing.

In addition, IT IS HEREBY ORDERED that the appellate clerk shall transmit a copy of this order to the Office of Disciplinary Counsel (**ODC**) for investigation. In referring this matter to the ODC, we express no opinion about whether violations of the Hawai'i Rules of Professional Conduct have occurred.

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

On the briefs:

Jon N. Ikenaga,
Seth Patek,
Office of the
Public Defender,
for Defendant-Appellant
Tyler J Delos Reyes.

/s/ Keith K. Hiraoka
Presiding Judge

/s/ Clyde J. Wadsworth
Associate Judge

/s/ Kimberly T. Guidry
Associate Judge

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