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NO. CAAP-25-0000631

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

STATE OF HAWAIʻI, Plaintiff-Appellee, v.
SARAH BAGGS, Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
KONA DIVISION
(CASE NO. 3DTA-24-01547)

SUMMARY DISPOSITION ORDER
(By: Hiraoka, Presiding Judge, McCullen and Gluck, JJ.)

On September 14, 2024, Defendant-Appellant Sarah Baggs was arrested for Operating a Vehicle Under the Influence of an Intoxicant and was released after posting $500.00 bail. Baggs argues that the District Court of the Third Circuit, Kona Division (**District Court**) should have dismissed the charge. On appeal, Baggs raises eleven points of error, which we consolidate into three broad arguments: (1) the charge should have been dismissed because trial did not commence within six months of the complaint, as required by Hawaiʻi Rules of Penal Procedure (**HRPP**) Rule 48 (eff. 2000); (2) the charge should have been dismissed with prejudice because Baggs's constitutional right to a speedy trial was violated, and the District Court further erred in not entering findings of fact (**FOFs**) and

conclusions of law (**COLs**) as required by HRPP Rule 12(e) (eff. 2007); and (3) Baggs's constitutional right to counsel was violated, and the District Court further erred in not entering FOFs and COLs as required by HRPP Rule 12(e).

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we conclude that the District Court erred in failing to make the requisite FOFs and COLs regarding Baggs's constitutional rights to counsel and to a speedy trial. As such, we vacate the District Court's July 7, 2025 Findings of Facts, Conclusions of Law, and Order (**District Court's FOFs/COLs**) denying Baggs's Motion to Dismiss (**MTD**), as well as the Judgment and Notice of Entry of Judgment entered against Baggs, and remand to the District Court for further proceedings consistent with this summary disposition order.

I. BACKGROUND

Baggs was arrested on September 14, 2024 and arraigned on October 10. At the arraignment, Baggs was referred to the Kona Office of the Public Defender (**OPD**).

On October 24, 2024, before OPD was appointed to represent Baggs, OPD filed a "[Proposed] Recommendation and Order Appointing Private Counsel Due to Conflict of Interest" (**OPD's Request**) (brackets in original). OPD informed the District Court that severe staffing shortages at OPD created a conflict between Baggs's interests and "the personal interests of the attorneys at OPD," and that OPD was "unable to act." OPD's Request cited Hawaiʻi Revised Statutes § 802-1 (entitled "Right to representation by public defender or other appointed counsel") and recommended appointment of private counsel "in the interest of justice."

The District Court denied OPD's Request on October 31, 2024, but did not appoint OPD to represent Baggs.[1] On November 4, 2024, Baggs appeared at her plea hearing with Deputy Public Defender Lezlie Kiaha (**DPD Kiaha**). The entirety of the hearing was as follows:[2]

> THE BAILIFF: Calling out of order number 4, Sarah Baggs.
>
> THE COURT: Ms. Kiaha, in this matter, [OPD] filed conflict docs, but the proposed order was denied by another judge.
>
> MS. KIAHA: Oh, by -- was this Judge Schlueter?
>
> THE COURT: Yes.
>
> MS. KIAHA: Okay.
>
> THE COURT: So you're still counsel of record.
>
> MS. KIAHA: All right. In that case, we will be entering a not guilty plea.
>
> THE COURT: Not guilty plea is entered. We'll continue for a pretrial conference on December 2nd, 2024 at 8:30.
>
> MS. WALKER [for the State]: Your Honor, for the record, the defendant's driver's license has been administratively revoked for one year, from October 15th, 2024 to October 14th, 2025.
>
> THE COURT: Thank you.
>
> MS. WALKER: Thank you.

On November 6, 2024, OPD filed a "Renewed [Proposed] Recommendation and Order Appointing Private Counsel Due to Conflict of Interest" (**OPD's Renewed Request**), making the same request for the appointment of private counsel for Baggs due to OPD's staffing shortage. (Brackets in original.) The District Court did not immediately act on OPD's Renewed Request.

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[1] The Honorable Dalilah E. Schlueter denied OPD's Request.

[2] The Honorable Ann S. Datta presided.

Baggs returned to District Court on December 2, 2024 for her pretrial conference. Baggs was not accompanied by counsel at this hearing. The District Court[3] stated:

> I understand that you've completed your application with [OPD], and that due to staffing issues, they've requested that the Court appoint you private counsel. The Court is in the process of doing so, but we have not located and secured you private counsel yet. So I'm going to continue this matter so that we can attempt -- continue to attempt to -- well, so we can continue to locate private counsel for you.
>
> So how that's going to work is once counsel is found, they will be -- contact you once they receive their appointment. We're not going to enter your plea at this time so that you can speak with your attorney prior to doing so.[4]

(Emphasis added.) The District Court continued the matter to January 13, 2025.

On January 13, 2025, Baggs returned to District Court. Baggs was still without counsel. The District Court[5] stated: "We're still looking for private counsel to represent you. We're continuing your case to February 24th, 2025. You're ordered to appear on that date and time." The prosecutor once again stated that Baggs's driver's license had been administratively revoked for one year, beginning on October 15, 2024.

On February 21, 2025, the District Court entered the Proposed Order attached to OPD's Renewed Request and appointed Joanne Hicks as private counsel for Baggs.[6] On February 24, 2025, Baggs appeared with Hicks and requested a continuance of

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[3] The Honorable Dalilah E. Schlueter presided.

[4] As previously noted, Baggs had entered a plea of not guilty on November 4, 2024.

[5] The Honorable Ann S. Datta presided.

[6] The Honorable Mahilani E.K. Hiatt entered the Proposed Order attached to OPD's Renewed Request.

the pretrial conference due to counsel's recent appointment. The District Court granted the continuance to March 31, 2025.

On March 27, 2025, Baggs (through counsel) filed an "[MTD] for Violation of Speedy Trial and/or Rule 48." She argued that the case should be dismissed pursuant to HRPP Rule 48 because trial had not commenced within six months of September 14, 2024 (the date of arrest with bail set); she further argued that her constitutional rights to counsel and a speedy trial had been violated. The District Court heard the MTD on April 28, 2025 and entered its FOFs/COLs denying the MTD on July 7, 2025.[7] The District Court's FOFs included the following:

> 7. On November 4, 2024, [OPD] appeared on behalf of [Baggs], entered a "Not Guilty" plea and the Court set the case for Pre-trial Conference on December 2, 2024.
>
> 8. On November 6, 2024, [OPD] filed [its Renewed Request].
>
> . . . .
>
> 10. During the hearing on December 2, 2024, . . . the Court noted [OPD filed its Renewed Request] and informed [Baggs] that the Court is looking for conflict counsel to appoint to [Baggs's] case.
>
> 11. At the December 2, 2024, hearing the Court did not grant [OPD's Renewed Request] and [OPD] remained [Baggs's] counsel of record.
>
> . . . .
>
> 14. On January 13, 2025, the Court informed [Baggs] that the Court was still looking for successor counsel to appoint to their case. [OPD] remained [Baggs's] counsel of record. The Court continued the case to February 24, 2025.
>
> . . . .
>
> 16. On February 21, 2025, the Court[] signed [OPD's Renewed Request] and appointed [Hicks].
>
> 17. On February 21, 2025, [OPD] was removed as [Baggs's] counsel of record.
>
> 18. On February 24, 2025, [Hicks] appeared on [Baggs's] behalf . . . .

[7] The Honorable Ann S. Datta presided.

(Emphases added.) The District Court's COLs stated:

> 6. On November 6, 2024, [OPD filed its Renewed Request,] effectively asking the Court for permission to withdraw from [Baggs's] case.
>
> 7. The Court did not rule on that request and [OPD] remained the counsel of record.
>
> 8. The pending withdrawal of counsel and the pending appointment of [Hicks] are collateral proceedings involving [Baggs] which caused the delay in the commencement of trial or resolution of [Baggs's] case.
>
> 9. [Hicks] was not obtained and appointed until February 21, 2025, at that time [OPD] was removed as counsel of record.
>
> 10. At all times between October 24, 2024, and February 21, 2025, [OPD] was [Baggs's] counsel of record.
>
> 11. There is good cause for the delay between November 6, 2024, and February 21, 2025, due to the unanticipated and unforeseeable delay in obtaining appointing [sic] of private counsel after [OPD] withdrew as counsel which caused legal excuse since [Baggs] qualified for the public defender services and is entitled to an attorney before the case can proceed.
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> 12. Therefore, time between the pending withdraw[al] of counsel and the appointment of [Hicks] is excludable pursuant to Rule 48 (c)(l), (c)(3), (c)(8), and (d)(l), and in accordance with State v. Senteno, 69 Haw. 363, 742 P.2d 369 (1987); State v. Choy Foo, 142 Hawaiʻi 65, 76, 414 P.3d 117, 128 (2018); State v. Gillis, 63 Haw. 285, 288, 626 P.2d 190, 192 (1981); and State v. Estencion, 63 Haw. 264, 625 P.2d 1040 (1981).
>
> . . . .
>
> 17. [Baggs's] rights to a speedy trial have not been violated and there is no prejudice to [Baggs], and it is in the interests of justice for the case to proceed.

(Emphases added.)

On July 25, 2025, Baggs entered a conditional no contest plea, reserving the right to appeal the District Court's denial of the MTD. This appeal followed.

II. STANDARDS OF REVIEW

A. HRPP Rule 48 Dismissal

> A trial court's [FOFs] in deciding an HRPP 48(b) [MTD] are subject to the clearly erroneous standard of review. An FOF is clearly erroneous when, despite evidence to support the finding, the appellate court is left with the definite and firm conviction that a mistake has been committed.

> However, whether those facts fall within HRPP 48(b)'s exclusionary provisions is a question of law, the determination of which is freely reviewable pursuant to the "right/wrong" test.

State v. Alkire, 148 Hawaiʻi 73, 85, 468 P.3d 87, 99 (2020) (quoting State v. Samonte, 83 Hawaiʻi 507, 514, 928 P.2d 1, 8 (1996)).

B. Interpretation of Court Rules

"The interpretation of a court rule is reviewed de novo, Sierra Club v. Dep't of Transp., 120 Hawaiʻi 181, 197, 202 P.3d 1226, 1242 (2009), and '[w]hen interpreting rules promulgated by the court, principles of statutory construction apply.'" State v. Choy Foo, 142 Hawaiʻi 65, 72, 414 P.3d 117, 124 (2018) (quoting Gap v. Puna Geothermal Venture, 106 Hawaiʻi 325, 331, 104 P.3d 912, 918 (2004)).

C. Questions of Constitutional Law

"Questions of constitutional law are reviewed de novo, under the right/wrong standard." State v. Tran, 154 Hawaiʻi 211, 217, 549 P.3d 296, 302 (2024) (cleaned up).

III. DISCUSSION

A. HRPP Rule 48

Baggs was arrested and posted bail on September 14, 2024. Pursuant to HRPP Rule 48, trial had to commence within six months of that date:

> **(b) By court.** Except in the case of traffic offenses that are not punishable by imprisonment, the court shall, on motion of the defendant, dismiss the charge, with or without prejudice in its discretion, if trial is not commenced within 6 months:
>
> (1) from the date of arrest if bail is set or from the filing of the charge, whichever is sooner, on any offense based on the same conduct or arising from the same criminal episode for which the arrest or charge was made [.]

(Emphases added.) See also State v. Hernane, 145 Hawaiʻi 444, 450, 454 P.3d 385, 391 (2019) ("The six-month period under HRPP Rule 48 is equivalent to 180 days.").

HRPP Rule 48(c), however, provides that some periods — such as continuances requested by the defendant — are excluded in reaching that six-month limit:

> **(c) Excluded periods.** The following periods shall be excluded in computing the time for trial commencement:
>
> . . . .
>
> (3) periods that delay the commencement of trial and are caused by a continuance granted at the request or with the consent of the defendant or defendant's counsel[.]

Baggs was arrested on September 14, 2024, and filed her MTD on March 27, 2025 — a total of 194 days. However, Baggs requested and received a continuance on February 24, 2025. That stopped the clock pursuant to HRPP Rule 48(c)(3). Excluding the thirty-one days attributable to Baggs's requested continuance (from February 24, 2025 to March 27, 2025), only 163 days counted towards the 180-day limit under HRPP Rule 48. The six-month period never expired, and the District Court did not err in rejecting Baggs's HRPP Rule 48 argument.

B. Constitutional Right to Speedy Trial

Baggs argues that the District Court erred in failing to address her constitutional argument regarding her right to a speedy trial. As a corollary, she argues that the District Court violated HRPP Rule 12(e) ("Where factual issues are involved in determining a motion, the court shall state its essential findings on the record."). We conclude that the District Court erred in both respects.

"The Sixth Amendment to the United States Constitution and article I, section 14 of the Hawaiʻi Constitution guarantee a defendant in a criminal case the right to a speedy trial[.]" State v. Visintin, 143 Hawaiʻi 143, 156, 426 P.3d 367, 380 (2018). An inquiry into whether this right has been violated is context specific and therefore "necessitates a functional analysis of the right in the particular context of the case[.]"

Barker v. Wingo, 407 U.S. 514, 522 (1972). In analyzing whether this right has been violated, Hawaiʻi courts apply the four-factor test articulated in Barker. See Visintin, 143 Hawaiʻi at 156, 426 P.3d at 380. The four-factor test balances the "[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." Barker, 407 U.S. at 530. "No one factor 'is to be regarded as either a necessary or sufficient condition to the finding of a deprivation of the right to a speedy trial.'" Visintin, 143 Hawaiʻi at 156, 426 P.3d at 380 (quoting State v. Lau, 78 Hawaiʻi 54, 62, 890 P.2d 291, 299 (1995)).

Here, the District Court ruled that "[Baggs's] rights to a speedy trial have not been violated and there is no prejudice to [Baggs], and it is in the interests of justice for the case to proceed." However, the factual basis of the District Court's decision regarding Baggs's right to a speedy trial is unclear, and the record does not demonstrate that the District Court performed the required Barker analysis. As the Hawaiʻi Supreme Court held in Visintin, the trial court "is certainly better positioned than an appellate court to make factual findings as to the causes of delay and the allocation of responsibility between the parties." 143 Hawaiʻi at 158, 426 P.3d at 382. Accordingly, we vacate and remand to the District Court to consider Baggs's argument that she was denied her constitutional right to a speedy trial. On remand, the District Court shall render FOFs and COLs consistent with Barker and Visintin. If the District Court concludes that Baggs's constitutional right to a speedy trial was violated, then the case shall be dismissed with prejudice. See State v. Wasson, 76 Hawaiʻi 415, 418, 879 P.2d 520, 523 (1994) ("The only remedy for the violation of an accused's right to speedy trial is dismissal with prejudice." (cleaned up)).

C. Constitutional Right to Counsel

A defendant "has a right to counsel under the sixth amendment to the United States Constitution and article I, section 14 of the Hawaiʻi State Constitution[.]" State v. Luton, 83 Hawaiʻi 443, 448, 927 P.2d 844, 849 (1996) (cleaned up). The right to counsel "attaches at critical stages of the criminal prosecution, only at or after the initiation of adversarial judicial criminal proceedings—whether by way of formal charge, preliminary hearing, indictment, information or arraignment." Id. (cleaned up). The United States Supreme Court has explained that once attachment of the right occurs, "counsel must be appointed within a reasonable time after attachment to allow for adequate representation at any critical stage before trial, as well as at trial itself." Rothgery v. Gillespie Cnty., Tex., 554 U.S. 191, 212 (2008). Delays in appointing counsel can be prejudicial. See, e.g., Betschart v. Oregon, 103 F.4th 607, 620 (9th Cir. 2024) ("Lack of counsel not only interferes with indigent criminal defendants' progression to critical stages by delaying those stages but also prevents any meaningful advocacy."). Without counsel being appointed within a reasonable time, defendants may not know what rights they possess and may not be able to begin establishing their defense. Id. at 622.

The United States Supreme Court has also been clear that mere appointment of counsel is not enough to satisfy this right. See Strickland v. Washington, 466 U.S. 668, 685-86 (1984) ("That a person who happens to be a lawyer is present at trial alongside the accused, however, is not enough to satisfy the constitutional command. . . . '[T]he right to counsel is the right to the effective assistance of counsel.'" (quoting McMann v. Richardson, 397 U.S. 759, 771 n.14 (1970))).

Baggs contends that the District Court erred in not addressing her constitutional argument regarding her right to counsel — that although DPD Kiaha was present in court with her on November 4, 2024, Baggs was, in fact, without an attorney from the time she requested counsel on October 10, 2024 until Hicks was assigned on February 21, 2025. She further argues that determining whether she had counsel involves questions of fact beyond whether an attorney was counsel of record (such as whether DPD Kiaha was actually acting as Baggs's counsel when entering a plea, and the practical effect of any period in which Baggs was without counsel), and that the District Court failed to make necessary findings as required by HRPP Rule 12(e). The State responds that there was no violation because nothing substantive occurred while Baggs lacked counsel.

Baggs's argument has merit. Although the District Court concluded that "[a]t all times between October 24, 2024, and February 21, 2025, [OPD] was the Defendant's counsel of record," merely having a "counsel of record" is not sufficient to satisfy a defendant's right to counsel. See Strickland, 466 U.S. at 685. The record reflects that Baggs attended court on December 2, 2024 and January 13, 2025 unaccompanied by an attorney. The District Court continued the matter both times — no critical stages occurred at either hearing — but the absence of counsel suggests a lack of counsel during this period.[8] Further, although DPD Kiaha was present with Baggs at the November 4, 2024 plea hearing, DPD Kiaha was never appointed as Baggs's counsel.

The District Court, however, never ruled upon Baggs's constitutional right to counsel argument. Further, even if the

[8] For the purposes of pretrial procedures, "'[c]ritical stages' [are] those pretrial procedures that would impair defense on the merits if the accused is required to proceed without counsel." Luton, 83 Hawai‘i at 449, 927 P.2d at 850 (quoting Gerstein v. Pugh, 420 U.S. 103, 122 (1975)).

District Court had considered Baggs's arguments, the District Court did not make FOFs regarding Baggs's right to counsel as required by HRPP Rule 12(e). There are no factual findings in the record as to whether Baggs had counsel prior to February 21, 2025, and whether that lack of counsel hampered her defense in any way. As such, this court cannot effectively review Baggs's constitutional argument regarding her right to counsel. The Judgment is therefore vacated, and the case is remanded to the District Court. See Visintin, 143 Hawaiʻi at 157, 426 P.3d at 381 ("This court has repeatedly stated that 'cases will be remanded when the factual basis of the lower court's ruling cannot be determined from the record.'" (quoting State v. Anderson, 67 Haw. 513, 514, 693 P.2d 1029, 1030 (1985))).

IV. CONCLUSION

For the foregoing reasons, we vacate the District Court's July 7, 2025 Findings of Facts, Conclusions of Law, and Order denying Baggs's Motion to Dismiss, as well as the Judgment and Notice of Entry of Judgment entered against Baggs, and remand to the District Court for further proceedings consistent with this summary disposition order.

Dated: Honolulu, Hawaiʻi, November 18, 2026.

On the briefs:

Joanne S.C. Hicks,
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Charles E. Murray III,
Deputy Prosecuting Attorney,
County of Hawaiʻi,
for Plaintiff-Appellee.

/s/ Keith K. Hiraoka
Presiding Judge

/s/ Sonja M.P. McCullen
Associate Judge

/s/ Daniel M. Gluck
Associate Judge