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NO. CAAP-25-0000633

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

STATE OF HAWAIʻI, Plaintiff-Appellee, v.
SENETI MALIPOLO KALAVI, Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
KONA DIVISION
(CASE NO. 3DTA-24-01550)

SUMMARY DISPOSITION ORDER
(By: Nakasone, Chief Judge, Guidry and Gluck, JJ.)

On October 1, 2024, the State of Hawaiʻi (**State**) filed a complaint charging Defendant-Appellant Seneti Malipopo Kalavi with Driving Without a License (**DWOL**) and Operating a Vehicle Under the Influence of an Intoxicant, as a second offense (**OVUII**). Kalavi argues that the District Court of the Third Circuit, Kona Division (**District Court**)[1] should have dismissed the charges. On appeal, Kalavi raises eleven points of error, which we consolidate into three broad arguments: (1) the charges 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);

[1] The Honorable Ann S. Datta presided.

(2) the charges should have been dismissed with prejudice because Kalavi'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) Kalavi'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 should have dismissed the charges pursuant to HRPP Rule 48. We therefore vacate the District Court's July 7, 2025 Findings of Facts, Conclusions of Law, and Order (**FOFs/COLs**) denying Kalavi's Motion to Dismiss (**MTD**), as well as the Judgment and Notice of Entry of Judgment entered against Kalavi, and we remand for the District Court to determine whether dismissal should be with or without prejudice. If the District Court dismisses the charges without prejudice, the District Court must also enter FOFs and COLs regarding Kalavi's constitutional speedy-trial right (and must dismiss the charges with prejudice if that right was violated). Based on our disposition of Kalavi's first two points of error, we need not reach the third.

I. Background

On November 17, 2023, Kalavi was arrested and released without bail. On October 1, 2024, the State filed a complaint charging Kalavi with DWOL and OVUII. Kalavi was arraigned on October 31, 2024, and the District Court's October 31, 2024 Order and Notice of Entry of Order states: "Court referred Defendant to the Office of the Public Defender."[2]

[2] The Honorable David Harada-Stone presided.

On November 15, 2024, the Kona Office of the Public Defender (**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 Kalavi'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 (**HRS**) § 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 did not immediately act on OPD's Request.

On November 25, 2024, Kalavi appeared for an entry of plea hearing. Kalavi was not represented by counsel at this hearing, and the District Court continued the matter to January 6, 2025. Kalavi returned to court on January 6, 2025. He was still without counsel, and the District Court continued the matter to February 24, 2025.

On February 21, 2025, the District Court entered the Proposed Order from OPD's Request and appointed Joanne Hicks as private counsel for Kalavi,[3] pursuant to HRS § 802-1. On February 24, 2025, Kalavi returned to court with Hicks and entered a plea of not guilty.

On March 31, 2025, Kalavi (through counsel) filed an "[MTD] for Violation of Speedy Trial and/or HRPP Rule 48.[4]" He argued that the case should be dismissed pursuant to HRPP Rule 48 because trial had not commenced within six months of the complaint being filed; he further argued that his constitutional

[3] The Honorable Mahilani E.K. Hiatt entered the Proposed Order from OPD's Request.

[4] The District Court's FOFs incorrectly state that Kalavi filed his MTD on March 27, 2025.

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.[5] The District Court's FOFs included the following:

> 6. At the hearing on November 25, 2024, the Court noted [OPD]'s Request for conflict counsel based on a conflict of interest cited by [OPD], and the filing [of OPD's Request], and informed [Kalavi] that alternative or conflict counsel would be appointed.
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> 7. However, the Court did not sign the Order granting [OPD's Request], and [OPD] remained [Kalavi's] counsel of record.
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> . . . .
>
> 10. On January 6, 2025, [Kalavi] appeared in court and the Court informed [Kalavi] that counsel had not yet been appointed and continued [Kalavi's] case to February 24, 2025. [OPD] remained [Kalavi's] counsel of record.
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> . . . .
>
> 12. On February 21, 2025, [Hicks] was appointed to represent [Kalavi]'s case and [OPD'S Request] was signed by the court. Dkt. #17.
>
> 13. On February 21, 2025, [OPD] was removed as [Kalavi's] counsel of record.

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

> 6. At all times between November 15, 2024, and February 21, 2025, [OPD] was [Kalavi's] counsel of record.
>
> 7. The pending withdraw[al] of counsel and the pending appointment of [Hicks] are collateral proceedings involving [Kalavi] that caused the delay, and this time is excludable pursuant to Rule 48(c)(1) and (d)(1).
>
> 8. There is good cause for the delay due to the unanticipated and unforeseeable delay in obtaining appointing [sic] of private counsel after [OPD] withdrew as counsel which caused legal excuse since [Kalavi] qualified for the public defender services and is entitled to an attorney before the case can proceed.
>
> 9. Therefore, the time between the pending withdraw[al] of counsel and the appointment of [Hicks] is excludable pursuant to Rule 48 (c)(1), (c)(3), (c)(8), and (d)(1),

[5] The Honorable Ann S. Datta presided.

> and in accordance with State v. Senteno, 69 Haw. 363, 742 P.2d 369 (1987); State v. Choy Foo, 142 Hawai‘i 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).
>
> . . . .
>
> 12. [Kalavi's] rights to a speedy trial have not been violated and there is no prejudice to [Kalavi], and it is in the interests of justice for the case to proceed.

(Emphasis added.)

On July 25, 2025, Kalavi 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 Hawai‘i 73, 85, 468 P.3d 87, 99 (2020) (quoting State v. Samonte, 83 Hawai‘i 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 Hawai‘i 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 Hawai‘i 65, 72, 414 P.3d 117, 124 (2018) (quoting Gap v. Puna Geothermal Venture, 106 Hawai‘i 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

The State charged Kalavi on October 1, 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:
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> (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) and (d), however, provide that some periods — such as the time needed for the trial court to hear a motion for withdrawal and substitution and to appoint new counsel — are excluded in reaching that six-month limit:

> **(c) Excluded periods.** The following periods shall be excluded in computing the time for trial commencement:
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> (1) periods that delay the commencement of trial and are caused by collateral or other proceedings concerning the defendant[.]
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> . . . .
>
> **(d) Per se excludable and includable periods of time for purposes of subsection (c)(1) of this rule.**
>
> (1) For purposes of subsection (c)(1) of this rule, the period of time, from the filing through the prompt disposition of the following motions filed by a defendant, shall be deemed to be periods of delay resulting from collateral or other proceedings concerning the defendant: motions . . . for withdrawal of counsel including the time period for appointment of new counsel if so ordered[.]

This exclusion in HRPP Rule 48(d) for withdrawal of counsel does not apply here, however, because OPD never represented Kalavi. OPD was never appointed as counsel for Kalavi, such that OPD's Request was not a motion for withdrawal.

In reaching this conclusion, we recognize that Kalavi had a statutory entitlement to representation by a public defender. HRS § 802-1 (Supp. 2024) provides:

> **Right to representation by public defender or other appointed counsel.** (a) Any indigent person who is:
>
> (1) Arrested for, charged with, or convicted of an offense or offenses punishable by confinement in jail or prison or for which the person may be or is subject to the provisions of chapter 571 . . .
>
> . . .
>
> shall be entitled to be represented by a public defender. If, however, conflicting interests exist, or if the public defender for any other reason is unable to act, or if the interests of justice require, the court may appoint other counsel.

This statutory guarantee of indigent representation by OPD provides for the appointment of "other counsel" if OPD is "unable to act" or "if the interests of justice require," id., which were the reasons given in OPD's Request. Here, no one represented Kalavi until the District Court appointed Hicks on February 21, 2025. OPD was never Kalavi's counsel. OPD, therefore, did not withdraw as his counsel, and the time that elapsed while the District Court considered OPD's Request was not excludable under HRPP Rule 48 as time needed for "withdrawal of counsel."

Instead, this case concerns the initial appointment of counsel. The Hawaiʻi Supreme Court held that time to appoint counsel is not excluded from HRPP Rule 48's six-month clock. Noting that "withdrawal of existing counsel and initial appointment of counsel are procedurally quite different[,]" the Court held that "[t]he fact that initial appointment of counsel was not placed among the examples of 'collateral or other

proceedings' in subsections (c)(1) or (d)(1) suggests that it was not intended to be treated like the items on those lists." Choy Foo, 142 Hawaiʻi at 74, 414 P.3d at 126; see also id. at 74-75, 414 P.3d at 126-27 ("Continuances for the appointment of counsel . . . are not identified as excludable periods in HRPP Rule 48(c)(1) or (d)(1). . . . [I]f a time period is not excluded from calculation by the rule, it is included in the calculation."). Here, the six-month clock continued to run while Kalavi waited for the initial appointment of counsel.

Nothing in the record here suggests that Kalavi did anything to delay proceedings: he showed up for his court hearings, there is no suggestion of any intentional delay, and there are no factual findings in the record to justify excluding any periods pursuant to the "good cause" exception in HRPP Rule 48(c)(8). The time to appoint counsel was not excludable under HRPP Rule 48.

Our application of Choy Foo's holding here is consistent with the purpose of HRPP Rule 48. See State v. Estencion, 63 Haw. 264, 268, 625 P.2d 1040, 1043 (1981) ("The purpose of Rule 48 is to ensure an accused a speedy trial, which is separate and distinct from [a defendant's] constitutional protection to a speedy trial." (footnote omitted)). Furthermore, the Choy Foo Court made clear that "[e]ven if HRPP Rule 48 were ambiguous with respect to its excludable time periods, the rule of lenity would require us to construe it strictly, and in favor of the defendant." 142 Hawaiʻi at 75, 414 P.3d at 127.

The State filed its complaint against Kalavi on October 1, 2024, and trial needed to commence within 180 days — that is, by March 30, 2025. Kalavi filed his MTD on March 31,

2025. Pursuant to HRPP Rule 48, the case should have been dismissed.[6]

Accordingly, we vacate the District Court's FOFs/COLs denying Kalavi's MTD. We remand this matter to the District Court to determine whether dismissal of the State's complaint is with or without prejudice, because HRPP Rule 48(b) "reposes discretion in the trial court" on that question. Estencion, 63 Haw. at 269, 625 P.2d at 1044; HRPP Rule 48(b) ("[T]he 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[.]"). See also State v. Fukuoka, 141 Hawaiʻi 48, 55–56, 404 P.3d 314, 321–22 (2017) (setting forth the determinative factors for dismissing a case with or without prejudice).

B. Constitutional Right to Speedy Trial

Our inquiry does not end with HRPP Rule 48, however:

> The Rule 48 violation entitles [a criminal defendant] to have the charges against him dismissed "with or without prejudice at the court's discretion." HRPP 48(b) (emphasis added). But [the defendant] also appeals the denial of his [MTD] on constitutional speedy trial grounds. "The only remedy for the violation of an accused's right to speedy trial is dismissal with prejudice." State v. Nihipali, 64 Haw. 65, 67 n. 4, 637 P.2d 407, 408 n. 4 (1981) (emphasis added). Thus, were we to find a violation of [the defendant's] constitutional speedy trial right, the charge against him would have to be dismissed with prejudice.

State v. Wasson, 76 Hawaiʻi 415, 418, 879 P.2d 520, 523 (1994). Kalavi argues that the District Court erred in failing to address his constitutional speedy-trial argument and failing to make necessary findings as required by HRPP Rule 12(e). If

[6] The State argues that HRPP Rule 48 is unconstitutional — and that it violates HRS § 602-11 (2016) — because it enlarges or modifies a defendant's right to a speedy trial. The State did not make this argument before the District Court, and we decline to address it for the first time on appeal. See State v. Gonzalez, 128 Hawaiʻi 314, 317, 288 P.3d 788, 791 (2012) ("Our precedent clearly demonstrates that a party can waive an argument by failing to raise it at trial even if the party ultimately prevails on that issue.").

Kalavi is correct that his constitutional right to a speedy trial was violated, then the case must be dismissed with prejudice.

"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 "[Kalavi's] rights to a speedy trial have not been violated and there is no prejudice to [Kalavi], and it is in the interests of justice for the case to proceed." However, the factual basis of the District Court's decision regarding Kalavi's right to a speedy trial is unclear, and the record does not demonstrate that the District Court performed the required Barker analysis. 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." Visintin, 143 Hawaiʻi at 158, 426 P.3d at 382. Accordingly, we vacate and

remand to the District Court to consider Kalavi's argument that he was denied his constitutional right to a speedy trial.[7] On remand, the District Court shall enter FOFs and COLs consistent with Barker and Visintin. If the District Court concludes that Kalavi's constitutional right to a speedy trial was violated, the case shall be dismissed with prejudice.

IV. CONCLUSION

For the foregoing reasons, we vacate the District Court's July 7, 2025 Findings of Facts, Conclusions of Law, and Order denying Kalavi's Motion to Dismiss, vacate the Judgment and Notice of Entry of Judgment entered against Kalavi, and remand to the District Court to determine whether dismissal should be with or without prejudice pursuant to HRPP Rule 48. If the District Court dismisses the charges without prejudice, the District Court shall then consider Kalavi's constitutional speedy trial argument.

Dated: Honolulu, Hawaiʻi, November 18, 2026.

On the briefs:

Joanne S.C. Hicks,
for Defendant-Appellant.

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

/s/ Karen T. Nakasone
Chief Judge

/s/ Kimberly T. Guidry
Associate Judge

/s/ Daniel M. Gluck
Associate Judge

[7] To be clear, the District Court does not need to perform this analysis if it determines that the charges should be dismissed with prejudice pursuant to HRPP Rule 48.