

*** NOT FOR PUBLICATION ***

DISSENTING OPINION BY NAKAYAMA, J.

I respectfully dissent from the majority's opinion. Reiterating my dissent in State v. Chun, 102 Hawai'i 383, 390, 76 P.2d 935, 942 (2003), I believe that, based on the plain meaning of HRS § 707-734, the legislature clearly intended the offense of "indecent exposure" to constitute "criminal sexual conduct." Thus, if a defendant is convicted of indecent exposure as directed toward a minor, the defendant is subject to the registration requirements of HRS chapter 846E.

This case turns on the interpretation of HRS §§ 707-734 and 846E-1. Statutory interpretation is reviewed de novo. Doe Parents No. 1 v. State Dept. of Educ., 100 Hawai'i 34, 57, 58 P.3d 545, 568 (2002).

In construing a statute, our foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. Moreover, we must read statutory language in the context of the entire statute and construe it in a manner consistent with the statute's purpose. We may also consider the spirit of the law, and the cause which induced the legislature to enact it . . . to discover its true meaning. Similarly, laws in pari materia, or upon the same subject matter, shall be construed with reference to each other, and, thus, what is clear in one statute may be called upon in aid to explain what is doubtful in another.

Id. (citations, bracket, and quotation marks omitted). "It is a cardinal rule of statutory interpretation that, where the terms of a statute are plain, unambiguous and explicit, we are not at liberty to look beyond that language for a different meaning. Instead, our sole duty is to give effect to the statute's plain and obvious meaning." State v. Richie, 88 Hawai'i 19, 30, 960 P.2d 1227, 1238 (1998). Because the terms of HRS §§ 707-734 and 846E are plain and unambiguous, we must "give effect to its plain

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and obvious meaning." Id.

HRS § 846E-2 provides that "[a] sex offender shall register with the attorney general and comply with the provisions of this chapter for life." HRS § 846E-1 defines sex offender as "[a]ny person convicted of a 'sexually violent offense' or a 'criminal offense against a victim who is a minor[.]'" While indecent exposure is not a sexually violent crime, it is, under certain circumstances, a criminal offense against a victim who is a minor. HRS § 846E-1 defines "criminal offense against a victim who is a minor" as, inter alia, "any criminal offense that consists of . . . [c]riminal sexual conduct toward a minor." Thus, the question that must be answered is whether indecent exposure is "criminal sexual conduct." I would answer in the affirmative.

HRS chapter 846E fails to define "criminal sexual conduct." Nonetheless, reading HRS § 707-734 in pari materia with HRS chapter 846E, the legislature clearly intended indecent exposure to constitute criminal sexual conduct. The legislature set forth indecent exposure in chapter 707 part V, entitled "sexual offenses."¹ Because it is a "sexual offense," indecent exposure obviously requires sexual conduct. The sexual conduct of indecent exposure is exposing one's genitals. Moreover, violation of HRS § 707-734, indecent exposure, is a criminal offense. It follows, therefore, that indecent exposure is

¹ If the legislature did not intend those convicted of indecent exposure to be "sex offenders" under circumstances such as the instant case, it should remove HRS § 707-734, indecent exposure, from chapter 707 part V, entitled "sexual offenses."

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criminal sexual conduct.

However, not all criminal sexual conduct requires registration pursuant to HRS chapter 846E, only "criminal sexual conduct toward a minor." Accordingly, nude sunbathers and streakers would not be required to register pursuant to HRS chapter 846E if convicted of indecent exposure for sunbathing or streaking in an area where minors happen to be present. A defendant must be convicted of indecent exposure, in violation of HRS § 707-734, and found to have directed that criminal sexual conduct toward a minor, pursuant to HRS § 846E-1, before he or she would be subject to the registration requirements of HRS chapter 846E.

In the instant case, Johnston was convicted of indecent exposure, in violation of HRS § 707-734(1), and this court affirms his conviction. Johnston's conduct was directed to the complainant, who was a minor. Thus, because Johnston was convicted of indecent exposure and his criminal sexual conduct was directed toward a minor, I would hold that the district court did not err by determining that Johnston was required to register, pursuant to HRS chapter 846E.