CONCURRING OPINION BY ACOBA, J.

Despite the issue of mootness, the majority remands this case for disposition without expressly deciding that issue. As I understand it, Minor-Appellant John Doe (Minor) is now twenty years old and the term of Minor's sentence has expired. Notwithstanding the majority position, the question remains as to whether this case is moot, inasmuch as the Family Court of the First Circuit (family court) exercises jurisdiction only over persons alleged to have committed acts when under the age of eighteen, and Minor's sentence has ended. Faced with this question, this court originally issued an Order to Show Cause. On February 20, 2003, the order was filed and it indicated that, "[i]nsofar as Appellant will attain the age of twenty on February 26, 2003, this appeal appears moot." Logically, the parties were ordered to "show cause as to why this appeal should not be dismissed as moot." Evidently, vacation and remand is ultimately appropriate. Yet, the question of whether this case is moot logically must be answered first. Because this opinion is not published,[1] it may mislead the parties as to what this court's position on the foregoing issue may be in the future. Therefore, I set forth my position with respect to mootness.

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[1] Inasmuch as this is a case of first impression involving a substantial question of public interest, I believe that this case must be published. See Torres v. Torres, 100 Hawai'i 397, 434, 60 P.3d 798, 835 (Dec. 17, 2002) (Appendix A) (Acoba, J., dissenting, joined by Ramil, J.).

I.

Minor appeals from a February 1, 2000 order of the family court, which granted the State's motion to revoke Minor's probation, and the February 11, 2000 order denying Minor's motion for reconsideration. Minor's opening brief was filed on July 19, 2000. The State's answering brief was filed on August 29, 2000. In its answering brief, the State agreed with Minor that the family court erred, and the family court's order revoking Minor's probation should be vacated. On August 31, 2000, Minor informed this court that no reply brief would be filed.

As mentioned, on February 20, 2003, this court issued an order to show cause why this appeal should not be dismissed as moot. The State filed no response to the order. On March 3, 2003, Minor filed a response stating that this appeal was "moot as to him as he is now twenty years old and beyond the jurisdiction of the family court's order." (Emphasis omitted.) Minor, however, argues that this appeal should not be dismissed because it involves "issues that affect public interest which are likely to reoccur yet evading review."

II.

I agree that the issue posed here implicates a substantial question of public interest, but, more fundamentally, I believe this case is not moot as to Minor. The family court's

order revoking Minor's probation is not a "[m]erely abstract or moot" question. Castle v. Irwin, 25 Haw. 786, 792 (1921). This appeal is still justiciable in that Minor has an adverse interest and an effective remedy in vacating the family court order revoking his probation. For, should Minor ever be convicted of a felony in the future, his probation violation, which is the subject of this appeal, can be considered by a judge or paroling authority in considering what sentence should be imposed. See Hawai'i Revised Statutes (HRS) §§ 706-602(1)(b) (1993) and 706-669(2) (1993); State v. Nobriga, 56 Haw. 75, 84, 527 P.2d 1269, 1274-75 (1974).

The Supreme Court of Connecticut recently determined that completion of a sentence for a violation of probation does not render the probation revocation appeal moot where collateral consequences that reasonably might have ensued from the probation revocation, included consequences in connection with a defendant's future involvement with the criminal justice system. See State v. McElveen, 802 A.2d 74, 83-85 (Conn. 2002). Such consequences include interference with the ability to obtain a favorable decision concerning pre-conviction bail, and an adverse effect on a defendant's standing in the community and prospects for employment. See id.

The Court of Appeals of Maryland has also held that an appeal of an order revoking a defendant's probation is not

rendered moot by the defendant completing service of his or her sentence pending appeal. See Adkins v. State, 598 A.2d 194, 202 (Md. 1991). That court set forth the test for mootness as follows:

> The test of mootness is whether, when it is before the court, a case presents a controversy between the parties for which, by way of resolution, the court can fashion an effective remedy. Where there are no direct consequences, a criminal case is moot only if it is shown that there is no possibility that any collateral legal consequences will be imposed on the basis of the challenged conviction.

Id. at 197 (internal quotation marks and citations omitted) (emphasis added). It was pointed out in Adkins that the petitioner's successful appeal of his probation violation

> would remove from his record any blemish of a violation of probation finding. On the other hand, if he is unsuccessful, that finding would remain and, more importantly, have a negative effect on subsequent proceedings, should petitioner again get into trouble with the law. In other words, it would have collateral consequences.

Id. at 199 (emphasis added) (citations omitted). Moreover, the court of appeals observed that

> one of the collateral legal consequences of a finding of violation of probation is that subsequent convictions may carry heavier penalties. . . . Thus, there is no reason that the test of mootness in a criminal case -- the possibility of collateral legal consequences -- should not apply equally to an adjudication of violation of probation.
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> It is the violation of probation finding, rather than the service of the sentence, that will have collateral legal consequences. Just as the conviction for the underlying offense can be considered in connection with sentencing for a subsequent conviction, so, too, as we have seen, can the finding of violation of probation. The collateral consequences of that finding, moreover, are often quite similar to those flowing from the underlying conviction. When, in each instance, the sentence has been served, there simply is no basis for holding that the appeal of the latter, but not the former, is moot. There is no meaningful

> way to distinguish between the collateral consequences flowing from a conviction for a substantive crime, or the offense underlying the probation violation, and those flowing from a violation of probation adjudication.

Id. at 201 (internal quotation marks, citations, brackets, and footnote omitted) (emphasis added). It was then concluded that the "collateral consequences of the possible use of this record of probation violation are, themselves, sufficient to avoid mootness." Id. at 202.

I agree with the Supreme Court of Connecticut and the Maryland Court of Appeals that an appeal of an order revoking a defendant's probation is not rendered moot by completion of the sentence pending appeal. I recognize that the United States Supreme Court in Spencer v. Kemna, 523 U.S. 1 (1998), has held otherwise. However, the Supreme Court of Connecticut has succinctly indicated why Spencer should not control in state courts:

> Specifically, in Spencer, the court concluded that, in what would otherwise be a moot case, a case or controversy exists only if the parties continue to have a personal stake in the outcome, such that an actual injury is traceable to the defendant and is likely to be redressed by a favorable judicial decision. For a defendant who already has served his sentence, some concrete and continuing injury other than the now-ended incarceration or parole -- some collateral consequence of the conviction -- must exist if the suit is to be maintained. Unlike in the case of a criminal conviction, in which collateral consequences are presumed to exist, the court determined that a revocation of parole is not presumed to carry detrimental consequences, and that the petitioner would be required to demonstrate the actual existence of collateral consequences to refute a finding of mootness. Specifically, the court rejected the petitioner's assertions that his claim was not moot because his parole violation could be used to his detriment in a future parole proceeding or to increase the petitioner's sentence in a future sentencing proceeding; the court concluded that both

> claims were predicated on future violations of the law and were not, therefore, necessary collateral consequences. The court also dismissed as too speculative the petitioner's contentions that his parole revocation could be used to impeach him if he were to appear as a witness or litigant in a future proceeding or as a defendant in a future criminal proceeding.
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> We note that we are not bound by *Spencer*, as it is based on the justiciability requirements applicable to the federal courts under article three of the United States constitution [sic]. Moreover, in light of the inconsistent application of the federal mootness doctrine, we do not find Spencer particularly compelling. In deciding issues of mootness, this court is not constrained by article three, § 2, or the allocation of power between the state and federal governments. Our state constitution contains no case or controversy requirement analogous to that found in the United States constitution [sic]. Indeed, unlike the United States constitution [sic], the state constitution does not confine the judicial power to actual cases and controversies. Rather, the jurisdiction of the courts shall be defined by law.

McElveen, 802 A.2d at 82-83 (internal quotation marks, citations, brackets, and emphasis omitted) (emphases added).

The jurisdiction of Hawaii's appellate courts, like Connecticut, is "provided by law." Hawai‘i Const. art VI, § 1. HRS §§ 641-11 and 641-12 (1993) provide for appeals of all final decisions and judgments in criminal matters. There is no question that Minor properly invoked the jurisdiction of this court in filing this appeal. This court was not divested of jurisdiction when Minor completed his sentence for a probation violation he contends, and the State agrees, was pursuant to an erroneous ruling of the family court.

Thus, I would hold that this appeal is not moot.