

DISSENTING OPINION OF ACOBA, J.

Because she allegedly rammed a parking lot gate with a vehicle, Defendant-Appellant Jo Anne Ann Walters (Walters), was arrested for and subsequently charged on April 16, 1999 by the police with DUI and CPD. Despite the fact that the charges arose from the same conduct in the same incident, See HRS § 701-109(2), the prosecution deferred consolidating the two charges for trial. In deciding the prosecution had unjustifiably delayed the trial in doing so, the district court made the following relevant written findings:

5. On May 17, 1999, [Walters's arraignment] on the DUI charge was continued to June 9, 1999. On May 20, 1999, [Walters] was arraigned on the CPD 4th charge; trial was set for June 22, 1999. On June 9, 1999, [Walters] was arraigned on the DUI charge; trial was set for August 17, 1999. At each arraignment the State was aware that it was prosecuting [Walters] for two offenses (CPD 4th and DUI) based on the same conduct arising from the same episode. Yet, the State made no effort at either arraignment to consolidate the charges for trial;

6. . . . [Walters] and her counsel arranged their respective work schedules around and prepared for the two separate trial dates;

7. On June 22, 1999[,] [Walters] appeared with counsel in court ready for trial on the CPD 4th charge. The State moved for a continuance of the CPD 4th charge so that it could later be consolidated with the DUI charge scheduled for trial on August 17, 1999. The CPD 4th charge was continued, over [Walters's] objection, to August 17, 1999. The State was aware of the DUI charge at the time of [Walters's] arraignment on the CPD 4th charge on May 20, 1999; it knew that the arraignment of the DUI charge had been continued to June 9, 1999. At that arraignment, it made no effort to consolidate the DUI charge with the CPD 4th charge. The State was aware of the August 17, 1999, trial date for the DUI charge as of June 9, 1999, yet it made no effort to consolidate the charges prior to the June 22, 1999, CPD 4th trial date; nor did the State advise [Walters's] counsel prior to [Walters's] appearance in court on June 22, 1999, that it sought to continue the CPD 4th trial date;

8. On August 17, 1999, [Walters] appeared with counsel ready for trial. The case continued to September 7, 1999, due to court congestion. On September 7, 1999, [Walters] again appeared

with counsel ready for trial. The parties agreed that the case would be continued by stipulation because the court calendar was long and it was unlikely that the case would proceed. On the next court date, October 27, 1999, [Walters] appeared with counsel ready for trial. The State had not filed any opposition to the three motions [Walters] had filed; . . . The court continued the case to allow the State to file memos in opposition to [Walters's] motions. The State chose to file only one memorandum; it was in opposition to Defendant's Motion To Dismiss Per HRS § 701-109; it was filed on November 10, 1999[;]

9. On the next court date, December 12, 1999, [Walters] appeared with counsel ready for trial. The arresting officer and one other State witness was absent. The court continued the case. . . . On the next court date, February 9, 2000, [Walters] appeared with counsel ready for trial. The court continued the case over [Walters's] objection because it believed that the matter should be heard by the judge who had set the briefing schedule. The case was continued until March 22, 2000. [Walters] appeared with counsel ready for trial. The State sought to arraign [Walters] on the new charge of CPD 4th and the DUI charge and proceed to trial on both cases. . . .

(Emphasis added.)

In the light of these circumstances, I believe the district court's determination that the "multiple continuances and delays" prejudiced Defendant and "congested the court's calendar," was well supported, thus warranting the exercise of the court's discretion to dismiss the case based on its inherent power. State v. Moriwake, 65 Haw. 47, 55, 647 P.2d 705, 711-12 (1982); see also State v. Mageo 78 Hawai'i 33, 37, 889 P.2d 1092, 1096 (App. 1995). Accordingly, I would affirm the district court's May 18, 2000 order dismissing the charges with prejudice.