

CONCURRING AND DISSENTING OPINION BY ACOBA, J.

I dissent from that portion of the Summary Disposition Order which holds that this court does not have jurisdiction over the cross-appeal of Defendant-Appellee/Cross-Appellant Robert L. Parrish (Defendant). I would hold that when Plaintiff-Appellant/Cross-Appellee State of Hawai'i (the prosecution) appeals from an order dismissing an indictment or charge without prejudice, and a defendant cross-appeals, alleging that the trial court abused its discretion in failing to dismiss the indictment or charge with prejudice, this court has jurisdiction over the cross-appeal under (1) this court's supervisory powers over courts of inferior jurisdiction, see Hawai'i Revised Statutes (HRS) § 602-4 (1993), and (2) this court's power to take necessary steps to promote justice, see HRS 602-5(7) (1993).

HRS § 602-4 states that "[t]he supreme court shall have the general superintendence of all courts of inferior jurisdiction to prevent and correct errors and abuses therein where no other remedy is expressly provided by law." HRS § 602-5(7) provides that "[t]he supreme court shall have jurisdiction . . . [t]o make . . . orders . . . and do such other acts and take such other steps as may be necessary . . . for the promotion of justice in matters pending before it."

In the interest of justice and to promote judicial economy, I would hold that, under the above provisions, this court retains jurisdiction over a defendant's cross-appeal when

the prosecution has appealed the trial court's order dismissing the charge without prejudice and the defendant cross appeals on the ground that the trial court should have dismissed the charge with prejudice. The appeal and the cross-appeal are merely two sides of the same question. Resolving the issue raised in the cross-appeal at this stage would eliminate the need for a later appeal on that issue in the event the defendant is convicted at a later time, or the necessity of a new trial if the trial court erred in failing to dismiss the case with prejudice.

Based upon the foregoing reasons, I would exercise jurisdiction over Defendant's cross-appeal.