CONCURRING OPINION BY ACOBA, J.

I concur in the result reached because, in the absence of the legislature's prohibition of a deferred acceptance of guilty (DAG) or deferred acceptance of no contest (DANC) plea for a particular offense, a trial court has the inherent power to grant or deny a DAG or DANC plea. Inasmuch as the legislature has not prohibited a DANC plea with respect to assault in the second degree, Hawai'i Revised Statutes (HRS) § 707-711(1)(a) (1993),[1] it was within the inherent power of the first circuit court (the court) to grant or to deny the motion of Defendant-Respondent Shawn Reilly (Defendant) for a DANC plea.

In this case, it is aptly noted that the Hawai'i Penal Code defines three types of bodily injury in HRS § 707-700 (1993 & Supp. 2002).[2] HRS § 853-4(2) (Supp. 2002) specifically

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[1] HRS § 707-711(1)(a) provides as follows:

> **§707-711 Assault in the second degree.** (1) A person commits the offense of assault in the second degree if:
> (a) The person intentionally or knowingly causes substantial bodily injury to another[.]

[2] HRS § 707-700 defines "bodily injury", "substantial bodily injury" and "serious bodily injury" as follows:

> "Bodily injury" means physical pain, illness, or any impairment of physical condition.
> . . . .
> "Substantial bodily injury" means bodily injury which causes:
> (1) A major avulsion, laceration, or penetration of the skin;
> (2) A burn of at least second degree severity;
> (3) A bone fracture;
> (4) A serious concussion; or
> (5) A tearing, rupture, or corrosive damage to the esophagus, viscera, or other internal organs.
> . . . .
> "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious,

(continued...)

prohibits the court from granting a deferred plea when "bodily injury" or "serious bodily injury" results from an assault. However, HRS § 853-4(2) is silent as to an assault involving "substantial bodily injury." In such a case, I conclude that the trial court's inherent power to grant or deny a motion for DAG plea or DANC plea is applicable as to HRS § 853-4(2). See State v. Keahi, 66 Haw. 364, 365, 662 P.2d 212, 213 (1983) (holding that "the trial court had inherent power to grant or deny acceptance of a deferred acceptance of *nolo contendere* plea"); State v. Buchanan, 59 Haw. 562, 584 P.2d 126 (1978); State v. Gumienny, 58 Haw. 304, 568 P.2d 1194 (1977); State v. Martin, 56 Haw. 292, 294, 535 P.2d 127, 128 (1975); State v. Brown, 1 Haw. App. 602, 603, 623 P.2d 892, 893 (1981) ("The trial court's power to grant or deny a motion for [DAG] plea is an inherent power.").

"We have previously recognized that 'courts have inherent equity, supervisory, and administrative powers as well as inherent power to control the litigation process before them.'" State v. Harrison, 95 Hawai'i 28, 32, 18 P.3d 890, 894 (2001) (quoting Kawamata Farms, Inc. v. United Agri Prods., 86 Hawai'i 214, 242, 948 P.2d 1055, 1083 (1997) (quoting Richardson v. Sport Shinko (Waikiki Corp.), 76 Hawai'i 494, 507, 880 P.2d 169, 182 (1994))).[3] In that regard, in Martin, the first case to

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[2](...continued)
permanent disfigurement, or protracted loss or impairment of the function of any body member or organ.

[3] It has been said that "'[i]nherent powers of the court are derived from the state Constitution and are not confined by or dependent on statute."' (continued...)

consider the power of a court to grant a DAG plea, this court held that "[i]nherent in the court's power in the disposition of a matter properly before [it] is the power to grant or deny, where applicable, a motion for DAG plea." 56 Haw. at 294, 535 P.2d at 128. It was concluded that "such power is necessarily implicit in the proper and ordinary administration of justice."[4] Id. (emphases added). The defendant in Martin pled guilty to the charge of theft in the third degree and moved for a DAG plea. See id. at 293, 535 P.2d at 127. The sentencing judge summarily rejected the motion and stated that "he did not and would not under any circumstances consider any motion for deferred acceptance of a guilty plea." Id. This court held that the trial court had the inherent power to grant or deny such a plea, and when "the sentencing judge, arbitrarily and capriciously, refuses to entertain at any time a seasonable and proper motion made by a defendant for a DAG plea, . . . such judicial conduct is improper, and prejudicially denies appellant due process of

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[3](...continued)
Enos v. Pacific Transfer & Warehouse, Inc., 79 Hawai'i 452, 458, 903 P.2d 1278, 1279 (quoting Richardson, 76 Hawai'i at 507, 880 P.2d at 182 (citations omitted)), reconsideration denied, 79 Hawai'i 452, 903 P.2d 1278 (1995).

[4] Similarly, in Brown, the Intermediate Court of Appeals (ICA) held that "the trial court has inherent power to grant or deny a motion for DANC plea." 1 Haw. App. at 603, 623 P.2d at 893. The ICA further noted that, "[i]n our view, the power to receive a plea necessarily includes the power to defer its acceptance. '(S)uch power is necessarily implicit in the proper and orderly administration of justice.'" Id. (quoting Martin, 56 Haw. at 294, 535 P.2d at 127). Thus, both this court and the ICA have clearly recognized an inherent power in the trial courts to grant or deny a motion for a deferred plea.

law." Id. at 294, 535 P.2d at 128.[5]

In fact, recognition of this inherent power in entertaining and granting motions for deferred acceptance pleas preceded the legislature's passage of HRS chapter 853, which sets forth those offenses subject to DAG and DANC pleas. See 1976 Haw. Sess. L. Act 154, § 1-4, at 279-81 (stating effective date as May 27, 1976). Prior to the initial enactment of chapter 853, the judiciary's own "Deferred Acceptance of Plea Program . . . [had been] in effect in the district court since 1971," and "[a] similar DAG Program [had] also been instituted in the circuit court." Martin, 56 Haw. at 294 n.2, 535 P.2d at 128 n.2. In light of this history, the legislature's failure to specifically preclude a deferred acceptance plea for instances involving "substantial bodily injury" leaves undisturbed the court's inherent power to grant or deny Defendant's motion for a DANC plea.[6] Cf. State v. Oshiro, 69 Haw. 438, 447, 746 P.2d 568, 573

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[5] The following cases are not contrary to Martin and cases holding similarly, inasmuch as they refer to HRS chapter 853, and the existence of that chapter did not require consideration of the trial court's inherent power: State v. Putnam, 93 Hawai'i 362, 368, 3 P.3d 1239, 1245 (2000); State v. Hamili, 87 Hawai'i 102, 104-07, 952 P.2d 390, 392-95 (1998) (per curiam); State v. Adams, 76 Hawai'i 408, 415, 879 P.2d 513, 520 (1994); State v. Dannenberg, 74 Haw. 75, 80, 837 P.2d 776, 778-79, reconsideration denied, 843 P.2d 144 (1992); State v. Tom, 69 Haw. 602, 603-04, 752 P.2d 597, 598 (1988); State v. Oshiro, 69 Haw. 438, 440, 443-48, 746 P.2d 568, 569, 571-74 (1987); State v. Kimsel, 101 Hawai'i 65, 67-68, 62 P.3d 628, 630-31 (App. 2002), cert. denied, 101 Hawai'i 95, 63 P.3d 403 (2003); State v. Matyas, 10 Haw. App. 148, 158, 861 P.2d 759, 765 (1993).

[6] In Brown, the ICA noted that "[i]t is a settled rule of statutory interpretation that 'the legislature, in the enactment of a statute, will not be presumed to intend to overturn long established legal principles, unless such intention is made clearly to appear by express declarations or by necessary implication[.]'" 1 Haw. App. at 604, 623 P.2d at 893 (quoting 73 Am. Jur. 2d Statutes § 181 (1974) (citations omitted)). The Brown court further stated that "we think the rule applies as much to inherent powers as it does to long established legal principles." Id. (emphasis added) (internal (continued...)

(1987) (determining that negligent homicide in the second degree, "HRS 707-704 is not within the group of offenses subject to HRS 853-4(1)[]", which "evidences that the legislature did not mean to divest a trial court of the discretion to grant a DAG plea or a DANC plea for violations of HRS § 707-704").

To the extent the legislature has established the parameters of DAG and DANC plea dispensation via HRS chapter 853, it has not done so when "substantial bodily injury" results. Cf. LeMay v. Leander, 92 Hawai'i 614, 621, 994 P.2d 546, 553 (2000) (noting that, "[a]lthough the power to punish for contempt is an inherent power of the courts, the legislature may establish alternative procedures and penalties that do not unduly restrict or abrogate the court's contempt power").[7] The legislature has not prohibited a trial court from granting a DANC plea for assault in the second degree.

Furthermore, "[i]t is also abundantly clear that[,] when properly exercised, the judge's discretionary action[, such as granting or denying a DAG or DANC plea,] will not be disturbed . . . unless there has been a plain and manifest abuse of such a discretion." Martin, 56 Haw. at 294, 535 P.2d at 128. The State

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[6](...continued)
quotation marks omitted). The legislature has made no express declaration, within HRS chapter 853, prohibiting trial courts from granting a DAG or DANC plea when "substantial bodily injury" results.

[7] In Keahi, this court specifically noted that it did "not pass upon the issue of whether § 853-1, as amended in 1979, impermissibly infringes upon the judiciary's inherent power to accept deferred acceptance of guilty pleas." 66 Haw. at 365 n.1, 662 P.2d at 213 n.1; see also Brown, 1 Haw. App. at 603 n.4, 623 P.2d at 893 n.4 (noting that it did "not reach the issue whether the legislature has the power to legislate judicial procedure which it possibly has done in the enactment of HRS chapter 853").

of Hawai‘i (the prosecution) has not argued any such abuse of discretion. Thus, if the legislature has not spoken, as it clearly has not in this case, of whether HRS § 707-711(1)(a) is subject to a DAG or DANC plea, it is left to the court in the exercise of its inherent power and discretion to determine whether, in any particular case, a motion for a DAG or DANC plea should or should not be granted.

Based upon the foregoing, I concur that the prosecution's petition for a writ directed to a judge must be denied.