***** FOR PUBLICATION *****

DISSENTING OPINION OF MOON, C.J.,
IN WHICH NAKAYAMA, J., JOINS

In interpreting statutes, this court has stated:

> The starting point in statutory construction is to determine the legislative intent from the language of the statute itself. Our foremost obligation when interpreting a statute is to ascertain and give effect to the intention of the legislature, which is obtained primarily from the language contained in the statute itself. We read statutory language in the context of the entire statute, and construe it in a manner consistent with its purpose. A rational, sensible and practicable interpretation of a statute is preferred to one which is unreasonable or impracticable. The legislature is presumed not to intend an absurd result, and legislation will be construed to avoid, if possible, inconsistency, contradiction, and illogicality.

State v. Bautista, 86 Hawai'i 207, 209-10, 948 P.2d 1048, 1050-51 (1997) (emphasis added) (citations, brackets, and quotation marks omitted). I believe the majority's interpretation of Hawai'i Revised Statutes (HRS) § 853-4 (Supp. 2002) leads to an inconsistent, contradictory, and illogical result. I, therefore, respectfully dissent.

The prosecution contends that Respondent violated HRS § 853-4(2) "by granting a deferral for a crime involving intentional or knowing causation of bodily injury." For the reasons discussed herein, I agree.

HRS § 853-4(2) provides that deferred acceptance of no contest (DANC) pleas are not available when

> [t]he offense charged is a felony that involves the intentional, knowing, or reckless bodily injury or serious bodily injury of another person, or is a misdemeanor or petty misdemeanor that carries a mandatory minimum sentence and that involves the intentional, knowing, or reckless bodily injury or serious bodily injury of another person[.]

The question, then, is whether the crime charged in the present case involves "serious bodily injury" or "bodily injury."

Here, the defendant was charged with assault in the second degree for punching, and thereby cutting and breaking, another person's nose. HRS § 707-711(1)(a) (1993) provides that a person commits the offense of assault in the second degree if "[t]he person intentionally or knowingly causes substantial bodily injury to another."[1] (Emphasis added.) As used in HRS chapter 707, "substantial injury" means bodily injury that 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.

HRS § 707-700 (1993). In contrast, "serious bodily injury" is "bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ," and "bodily injury" "means physical pain, illness, or any impairment of physical condition." Id. (emphasis added). Thus, HRS § 707-700 classifies injuries to the person based upon the degree of severity. The least severe injuries come under "bodily

[1] Prior to 1986, HRS § 707-700 defined only two classifications of injury to the person: "bodily injury" and "serious bodily injury." "Substantial bodily injury" was added by the legislature in 1986. 1986 Haw. Sess. L. Act 314, § 48 at 614.

injury," intermediate injuries are classified under "substantial bodily injury," and the most severe injuries fall under "serious bodily injury." See Hse. Conf. Comm. Rep. No. 51-86, in 1986 House Journal, at 937 ("The definition of bodily injury has been expanded to include an intermediate level on substantial bodily injury. . . . 'Substantial bodily injury' has been added to account for injuries which are far more serious than mere bodily injury but do not approximate a risk of death or permanent loss or disfigurement.").

As indicated by the prosecution, it is inherent in the classification scheme created by HRS § 707-700 that classifications for less severe injuries are necessarily subsumed within those for more severe injuries. For example, a major laceration or bone fracture constituting "substantial bodily injury" necessarily involves "bodily injury," i.e., physical pain, illness, or an impairment of physical condition. This logic is supported by the plain language of HRS § 707-700, which defines both "substantial bodily injury" and "serious bodily injury" as forms of "bodily injury."

The defendant in the present case was charged with assault in the second degree, a felony involving the intentional or knowing causation of "substantial bodily injury." As noted supra, the plain language of HRS § 707-700 indicates that "substantial bodily injury" necessarily subsumes "bodily injury."

Because HRS § 853-4 clearly provides that DANC pleas are not available in cases where the defendant is charged with a felony that involves the intentional, knowing, or reckless causation of "bodily injury," a DANC plea is not available to the defendant in the present case.

The majority maintains that it is bound by the plain language of HRS § 853-4 to affirm Respondent's interpretation because HRS § 707-700 defines three degrees of physical injury and HRS § 853-4 forecloses deferral for only two of them. As the prosecution notes, however, even if we were to conclude that the language of the HRS § 853-4 appears to plainly exclude crimes involving "substantial bodily injury," the inquiry does not end there. In a case interpreting HRS § 853-4, this court has previously noted that statutory language that appears to be clear and unambiguous may be ambiguous when read in the context of the entire statute. See State v. Sylva, 61 Haw. 385, 387-89, 605 P.2d 496, 498-99 (1980). As interpreted by the majority, HRS § 853-4(2) would prohibit DANC pleas to defendants charged with felonies involving the least and the most severe physical injuries, but would allow DANC pleas to defendants who cause intermediate injuries. Clearly, the legislature could not have intended such an anomalous result.

The legislative history indicates that, when HRS § 853-4 was amended to include the terms "bodily injury" and

"serious bodily injury," those were the only two definitions of physical injury included in HRS § 707-700. 1980 Haw. Sess. L. Act 292 § 2 at 557-58; HRS § 707-700 (1976). By amending HRS § 853-4 to prohibit DANC pleas to defendants charged with felonies involving "bodily injury" and "serious bodily injury," the legislature clearly intended to exclude those defendants charged with felonies involving the intentional, knowing, or reckless causation of any form of physical injury to another person. In my view, the addition of an intermediate category of physical injury does not change nor affect the legislative intent of the statute. Therefore, I believe allowing a DANC plea to a defendant charged with intentionally or knowingly causing substantial bodily injury is contrary to the legislature's intent. Accordingly, based upon the foregoing, I would grant the petition for a writ directed to a judge.