NO. 22293

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

In the Interest of JOHN DOE,
Born on April 30, 1982

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-J NO. 95-23288)

MEMORANDUM OPINION
(By: Burns, C.J., Watanabe and Lim, JJ.)

Minor-Appellant John Doe (John), born on April 30, 1982, appeals District Family Court Judge Rodney K. F. Ching's January 11, 1999 Decree Re: Law Violation Petitions (January 11, 1999 Decree), which decided that John "is a law violator within the purview of [Hawaiʻi Revised Statutes (HRS)] Section 571-11(1)" and sentenced him as follows:

> 1. [John] is placed on probation until the further order of the court.
>
> 2. [John] shall be detained in Hale Hoʻomalu from Friday, January 15, 1999 at 5 p.m. and released on Sunday, January 17, 1999 at 4:00 PM to his parent, then detained from Friday, January 22, 1999 at 5 p.m. and released on Sunday, January 24,[1999] at 5 p.m. to his parent.[1]

[1] Hale Ho'omalu (House of Detention) is a temporary detention facility where a child is taken pursuant to Hawaiʻi Revised Statutes (HRS) § 571-31(b)(3) (1993) "if the child's immediate welfare or the protection of the community requires it, or the child is subject to detention for violation of a court order of probation or protective supervision."

(continued...)

3. [John] shall participate in counseling as arranged by Dept. of Health and YMCA until clinically discharged.

4. [John] is hereby released from protective supervision to Family Court and the Department of Education.

(Footnote added.) We vacate and remand.

BACKGROUND

June 3, 1996 — Appellee State of Hawai‘i (the State) filed a Petition alleging that John was a truant from school and, as a result, came within the jurisdiction of the family court pursuant to HRS § 571-11(2)(C) (1993).

July 23, 1996 — Another petition was filed charging Theft in the Fourth Degree.

October 21, 1996 — A third petition was filed alleging that John was again truant.

October 25, 1996 — John admitted to all three petitions and was adjudicated to be both a law violator, HRS § 571-11(1), and a status offender, HRS § 571-11(2). The Findings, Order and Decree placed John on Protective Supervision. Both the Family Court's Rules of Protective Supervision (RPS-FC) and the Department of Education's Rules of Protective Supervision

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[1](...continued)

HRS § 571-32(e) (1993) states that if there is probable cause to believe that the child is a status offender,

> the child may be held, following a court hearing, in a shelter but may not be securely detained in a detention facility for juveniles for longer than twenty-four hours, excluding weekends and holidays, unless the child . . . is allegedly in or has already been adjudicated for a violation of a valid court order, as provided under the federal Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

HRS § 571-48(2) (1993) governs the placement of a child adjudicated a status offender under HRS § 571-11(2) (1993). HRS § 571-48(1) (1993) governs the placement of a child adjudicated a law violator under HRS § 571-11(1) (1993). Only the latter permits placement in a Hawai‘i youth correctional facility.

(RPS-DOE) were ordered and signed by John. The RPS-FC stated as follows:

> 4. You must attend your classes at school regularly, unless excused by the school or this Court. At school you are not to behave in any manner which might cause you to be suspended or expelled.
>
> . . . .
>
> 6. You are not to remain away from your residence overnight without first having permission from your parent(s), guardian(s), or foster parent(s).
>
> . . . .
>
> 11. You must attend counselling as directed by your court officer until clinically discharged.

November 27, 1996 — The State filed a petition alleging that John violated RPS-FC Rule 4. John admitted to the petition and the court continued John on Protective Supervision.

March 12, 1997 — The State filed a petition alleging that John violated RPS-FC Rule 6 by leaving home without permission on February 14, 1997, and remaining away until February 15, 1997, when he was apprehended.

March 18, 1997 — The State filed a petition alleging that John violated RPS-FC Rule 4 by being truant from school from January 6, 1997, through March 13, 1997.

May 16, 1997 — John admitted to the petitions and the court again continued John on Protective Supervision.

December 9, 1997 — The State filed four petitions alleging violations of RPS-FC Rules 4 and 11.

January 30, 1998 — The family court dismissed the four petitions without prejudice and ordered the State to file petitions alleging contempt of court.

November 20, 1998 — The State filed three petitions alleging violations of RPS-FC Rule 4 in August, September, and October of 1998.

December 7, 1998	The State filed two petitions alleging violations of RPS-FC Rule 4 in September and October of 1997 and requesting jurisdiction under HRS § 571-11(1). A third petition alleged contempt for violation of RPS-FC Rule 11.
January 11, 1999	Based on the first two petitions filed on December 7, 1998, John was adjudicated a law violator, HRS § 571-11(1), for Contempt of Court, HRS § 710-1077 (1993), was placed on probation until the further order of the court, was detained at Hale Hoʻomalu for two weekends, and was ordered to participate in counseling until clinically discharged. The third petition was dismissed with prejudice based on an oral motion to withdraw.
January 25, 1999	John filed a Motion for Reconsideration of Adjudication.
January 29, 1999	The court denied the motion for reconsideration without a hearing and entered its Findings of Fact.

STANDARD OF REVIEW

Conclusions of law are reviewed *de novo* under the right/wrong standard of review. Raines v. State, 79 Hawaiʻi 219, 222, 900 P.2d 1286, 1289 (1995). Under this standard, the appellate court is not required to give any deference to the trial court's conclusion. Dan v. State, 76 Hawaiʻi 423, 428, 879 P.2d 528, 533 (1994).

DISCUSSION

1.

John contends that the family court failed to set forth, in the January 11, 1999 Decree, the particular

circumstances of the offense of criminal contempt for which John was adjudicated, and thereby violated HRS § 710-1077. We agree.

HRS § 710-1077(5) (1993) specifically requires that "[w]henever any person is convicted of criminal contempt of court or sentenced therefor, the particular circumstances of the offense shall be fully set forth in the judgment and in the order or warrant of commitment." The Hawai‘i Supreme Court further added that "[t]his is required whenever there is a conviction for criminal contempt of court, not only in cases where imprisonment is imposed. Oral findings are not enough to satisfy the mandate of the statute." State v. Hicks, 71 Haw. 564, 567, 798 P.2d 906, 907 (1990).

In the instant case, on the subject of the particular circumstances of the offense, the January 11, 1999 Decree states only the following:

> This matter was heard in this court on January 11, 1999 and an inquiry was made into the validity of the allegation(s) purporting to bring the minor within the court's jurisdiction.
>
> After full consideration of the admitted evidence the Court finds that the material allegations of the petition(s) have been proved beyond a reasonable doubt and that the minor is a law violator within the purview of HRS Section 571-11(1).

2.

John argues that "the written findings recited what the witnesses testified to at the hearing, not the particular circumstances of the offense. Recitation of testimony is not finding of the court." We conclude John is right. State v.

Lloyd, 88 Hawai‘i 188, 964 P.2d 642 (1998). In its entirety, the family court's findings state as follows:

> 1. The Minor was born on April 30th, 1982.
>
> 2. Under Rule 201 of the Hawai‘i Rules of Evidence, the Court took judicial notice of the records and files in FC-J No. 95-23288 including the Order and Rules of Protective Supervision issued by the Honorable Vernon Woo on October 25th, 1996.
>
> 3. Court Officer Gordean Akiona (hereinafter, "Akiona") of the Juvenile Intake Branch of the Family Court of the First Circuit testified to the following: On December 2nd, 1996, the Family Court of the First Circuit assigned her as [John's] probation officer. Shortly thereafter, she went over all the Rules of Protective Supervision with [John]. Furthermore, [John] indicated he understood the Rules of Protective Supervision including Rule 4 which stated [John] must attend school regularly unless excused by the school.
>
> 4. Waianae Intermediate School counselor Lindsey Ho then presented the following evidence: He was an authorized representative of Waianae Intermediate School and had personal knowledge of the attendance records taken by the school teachers. He stated the school kept attendance records by having the teachers submit the attendance sheet after each school day to the office where the staff then scanned the sheet through a machine. The records indicated [John] was either truant, unexcused tardy, or unexcused absent on the following dates: September 3rd through September 22nd, 1997, September 24th, 29th, 1997, October 3rd, 6th, 8th, 10th, 13th, 16th, 17th, 27th, and 28th, 1997.

CONCLUSION

Accordingly, we vacate the family court's January 11, 1999 Decree Re: Law Violation Petitions and remand for further proceedings in the light of this opinion.

On remand, the court must consider the fact that recently, in In re Jane Doe, Born on June 16, 1983, No. 21876, slip op. at 15 (Hawai‘i, April 30, 2001), the Hawai‘i Supreme Court stated that "HRS chapter 571 does not expressly bar the family court from dealing with violators of court orders of protective supervision under its inherent authority to punish

contempts and its jurisdiction over 'law violators' in HRS § 571-11(1)." The court held that "the family court may adjudicate and punish status offenders in violation of a court order of protective supervision under HRS § 571-11(1)." Id. at 19. However, the court stated that

> in line with other courts, we impose several limitations on the family court's contempt powers. First, the minor must receive sufficient notice to comply with the court's order and must understand its terms and operation, in particular, the possibility of secure detention for disobedience. Second, the court must consider less restrictive alternatives and determine them ineffective or inappropriate. While the court need not necessarily have attempted lesser penalties before imposing secure confinement, the record should indicate that lesser alternatives were considered by the juvenile court before ordering incarceration. Third, contact between the minor and juvenile delinquents convicted of other crimes must be kept to a minimum. These protective conditions strike the appropriate balance between the competing policies of limiting the secure detention of status offenders and preserving the dignity and authority of the family court.

Id. at 19-20 (footnotes, internal citations and quotation marks omitted).

DATED: Honolulu, Hawai‘i, August 8, 2001.

On the briefs:

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for Minor-Appellant.

Chief Judge

Alexa D. M. Fujise,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Appellee.

Associate Judge

Associate Judge