NO. 23786

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI‘I

MELVIN LUCERO ANDRES, Petitioner-Appellant, v.
ADMINISTRATIVE DIRECTOR OF THE COURTS, STATE OF HAWAI‘I,
Defendant-Appellee

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CASE NO. JR00-0038)

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

Petitioner-Appellant Melvin Andres (Andres) appeals from the September 7, 2000 Decision and Order Affirming Administrative Revocation entered by District Court Judge Tenney Z. Tongg. We affirm.

BACKGROUND

On April 8, 2000, Andres was arrested for driving under the influence of intoxicating liquor.

The Administrative Review Decision dated April 13, 2000, noted that Andres "refused to submit to a breath and/or blood test after being informed of the sanctions" and affirmed the administrative revocation of Andres' driver's license from May 9, 2000, to May 8, 2001. The Hearing Officer's June 28, 2000 Findings of Fact, Conclusions of Law, and Decision reduced the revocation period to three months because Andres had taken an alcohol concentration test.

RELEVANT STATUTES[1] AND PRECEDENT

Hawaii Revised Statutes (HRS) § 286-254(a)(3) (1993) states as follows: "The notice of administrative revocation shall provide, at a minimum and in clear language, the following general information relating to administrative revocation: . . . [t]hat criminal charges filed pursuant to section 291-4 may be prosecuted concurrently with the administrative action."

HRS § 286-255(a) (Supp. 1999) requires the arresting officer to inform the arrestee "of the sanctions under this part [XIV, §§ 286-251 through 286-266], including the sanction for refusing to take a breath or blood test."

HRS § 286-257(b)(1)(C)(Supp. 1999) states as follows:

> **Sworn statements of law enforcement officials.**
>
> . . . .
>
> (b) Whenever a person is arrested for a violation of section 291-4 or 291-4.4 and refuses to submit to a test to determine alcohol concentration in the blood, the following shall be immediately forwarded to the director:
>
> (1) A copy of the arrest report and the sworn statement of the arresting officer stating facts that establish that:
>
> . . . .
>
> (C) The arrestee was informed of the sanctions of this part [XIV, §§ 286-251 through 286-266], that criminal charges may be filed, and the probable consequences of refusing to be tested for concentration of alcohol in the blood[.]

In State v. Wilson, 92 Hawaiʻi 45, 987 P.2d 268 (1999), the Hawaiʻi Supreme Court affirmed the granting of a motion to

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[1] We note that Hawaii Revised Statutes §§ 286-251 through 286-266 were repealed effective January 1, 2002.

suppress the results of the blood alcohol test because Wilson had been told that a person who consented to the blood test and failed it would have his or her driving privileges revoked for only three months whereas, in fact, a person who consented to the blood test and failed it would have his or her driving privileges revoked for anywhere from three months to one year. In other words, the information given to Wilson was materially inaccurate.

In State v. Feldhacker, 76 Hawai‘i 354, 357, 878 P.2d 169, 172 (1994), the Hawai‘i Supreme Court concluded that "[b]ecause the Notice contains an improper and erroneous statement of a defendant's rights, it is void and must be modified to comply with the requirements of HRS § 286-253."

DISCUSSION

A.

When he was arrested and before he decided to take a breath and/or blood test, Andres was advised that "[c]riminal charges may be filed under section 291-4, HRS, Driving Under the Influence of Intoxicating Liquor[.]" At the hearing, counsel for Andres asked the court "to take judicial notice that [criminal charges] are always filed." The Hearing Officer responded that "this is a Statewide Office and quite often in outer island jurisdictions they don't file a State case." Counsel for Andres retorted, "All right, but on Oahu, they do. Our Prosecutor files every one. We're on Oahu."

In his decision, the Hearing Officer cited the notice requirement of HRS § 286-254(a)(3) "[t]hat criminal charges filed pursuant to section 291-4 may be prosecuted concurrently with the administrative action" and decided that granting the request to change the word "may" to "shall" would be "outside of" the "limited jurisdiction" of a Hearing Officer.

Andres contends that the district court erred in upholding the Hearing Officer's decision. Andres argues that "[a]n arrestee has the right to be properly and correctly informed under the law, i.e., that criminal charges <u>will</u> be filed." (Emphasis in original.) We disagree. Conformity with the applicable statutes is sufficient.

HRS § 286-254(a)(3) requires notice "[t]hat criminal charges filed pursuant to section 291-4 may be prosecuted concurrently with the administrative action." HRS § 286-257(b)(1)(C) requires information "that criminal charges may be filed, and the probable consequences of refusing to be tested for concentration of alcohol in the blood[.]" In other words, when speaking of "the probable consequences of refusing to be tested for concentration of alcohol in the blood[,]" the statute is speaking of consequences other than criminal charges. When speaking of criminal charges, it requires information "that criminal charges may be filed[.]"

B.

In this case, Andres was informed that "[i]f you choose to take a test and the test result is below the legal limit, administrative revocation proceedings will be terminated."

Andres argues that the district court erred in upholding the Hearing Officer's finding that an arrestee has no right to be informed of Hawai‘i's legal limit for alcohol in the blood of a driver of a motor vehicle. Andres argues that the warning was insufficient because it did not inform him of the exact percentage of the legal limit. We disagree. The statutes and the precedent do not require such detailed information. Wilson "mandates accurate warnings." Wilson, 92 Hawai‘i at 49, 987 P.2d at 272 (emphasis in original). In this case, there were accurate warnings.

C.

Andres contends that the district court erred in upholding the Hearing Officer's finding that Andres was informed of the sanctions of HRS Chapter 286, Part XIV, and that no evidence to the contrary was offered. More specifically, Andres argues that the relevant statutes "mean that an arrestee must be informed of not merely the consequences or probable consequences of refusing a chemical test, but the other sanctions under the statutory scheme as well." In effect, Andres contends that all relevant parts of the statute should be read to the arrestee.

Specifically, Andres points out that the testimony of the arresting officer established

> that Andres was not informed of all of the sanctions for taking a chemical test and failing, i.e.: (1) the criteria for, and the restrictions on, a conditional permit and the consequences of violating those restrictions (H.R.S. §286-264(d) (1993)), and (2) the requirements for relicensing (H.R.S. §286-265 (1993)) following revocation (H.R.S. § 286-261(b)).

(Footnotes omitted.) We conclude the statutes and precedent do not require such detailed information. The precedent of Feldhacker, 76 Hawai‘i at 357, 878 P.2d at 172, is not relevant because Andres is not complaining about "an improper and erroneous statement."

CONCLUSION

Accordingly, we affirm the September 7, 2000 Decision and Order Affirming Administrative Revocation.

DATED: Honolulu, Hawai‘i, August 1, 2002.

On the briefs:

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for Petitioner-Appellant.

Marie C. Laderta,
Deputy Attorney General,
for Respondent-Appellee.

Chief Judge

Associate Judge

Associate Judge