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**NOT FOR PUBLICATION**

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NO. 24340

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
MANUEL MERINO, Defendant-Appellant

APPEAL FROM THE FIFTH CIRCUIT COURT  
(CR. NO. 00-01-0204)

MEMORANDUM OPINION

(By: Burns, C.J., Watanabe and Foley, JJ.)

Defendant-Appellant Manuel Merino (Merino) appeals from the Judgment filed May 8, 2001 in the Circuit Court of the Fifth Circuit<sup>1</sup> (circuit court). Merino was found guilty of Escape in the Second Degree in violation of Hawaii Revised Statutes (HRS) § 710-1021 (1993) pursuant to a jury trial and was sentenced to a maximum period of five years of imprisonment.

Merino's opening brief does not contain a "concise statement of the points of error" as required by Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(4). Merino's opening brief also omits a separate section entitled "Standard of Review" as required by HRAP Rule 28(b)(5). Additionally, Merino's opening brief excludes required record references in his statement of the case as required by HRAP 28(b)(3). Merino's counsel is warned that future instances of noncompliance with HRAP Rule 28 may result in sanctions against him.

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<sup>1</sup>The Honorable Clifford L. Nakea presided.

Merino's argument section of his opening brief contends that the circuit court erred in not dismissing the Escape in the Second Degree charge pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 48 and that Merino's right to a speedy trial under the United States and Hawai'i Constitutions was violated.

Hawai'i Rules of Penal Procedure Rule 48(b) (1) provides:

**Rule 48. Dismissal.**

. . . .

(b) *By court.* Except in the case of traffic offenses that are not punishable by imprisonment, the court shall, on motion of the defendant, dismiss the charge, with or without prejudice in its discretion, if trial is not commenced within 6 months:

(1) from the date of arrest if bail is set or from the filing of the charge, whichever is sooner, on any offense based on the same conduct or arising from the same criminal episode for which the arrest or charge was made[.]

On July 27, 2000, during a probation appointment, Merino was served with a bench warrant for revocation of probation. After being served with the bench warrant by a deputy sheriff, Merino ran away. Merino was arrested on the same bench warrant on July 31, 2000, but was not arrested on the escape charge at that time.

On October 16, 2000, while still in custody for the probation violation, Merino was charged by indictment with Escape in the Second Degree. Merino was arraigned on November 6, 2000.

On April 3, 2001, the parties appeared for a jury trial, at which time Merino informed the circuit court that he wanted to bring a HRPP Rule 48 motion to dismiss the charge

against him. Merino also informed the circuit court that he wanted to dismiss his attorney because his attorney disagreed with him about bringing the Rule 48 motion, had tried to mislead Merino, had failed to be diligent in communicating with Merino, and because of "irreconcilable differences." Merino argued that because he was offered a plea bargain on August 30, 2000 that included the escape charge (with an agreement that if he pled to the forthcoming escape charge, his sentence for the escape charge would run concurrently with his probation violation sentence), the six-month period under HRPP Rule 48 should run from the date of the plea bargain offer instead of the indictment date. Merino's Rule 48 motion was denied on the ground that trial would commence within six months of the filing of the escape charge against him. Merino's motion for new counsel was granted and a trial date of April 12, 2001 was set. On April 12, 2001 a Stipulation to Continue Trial Date was filed, in which the parties stipulated that the time between April 6, 2001 and the new trial date of May 21, 2001 would be excluded for HRPP Rule 48 purposes. The one-day trial was held on April 25, 2001.

On appeal, Merino argues that the six-month period ran not from the filing of the charge as expressly stated in HRPP Rule 48, but from the offer of a plea bargain on an unfiled, yet forthcoming charge while he was in custody on an unrelated matter. Merino's contention is directly contrary to the wording

of HRPP Rule 48 that he cites for authority and is without any merit whatsoever.

Additionally, Merino's contention that his right to a speedy trial under the United States and Hawai'i Constitutions was violated is without merit. Merino was charged on October 16, 2000; therefore, the six-month period expired on April 14, 2001. A stipulation was filed on April 12, 2001, which excluded the period of time from April 6, 2001 until May 21, 2001 for HRPP Rule 48 purposes. Merino's trial was held on April 25, 2001 -- before the excluded time expired. Merino fails to meet any of the requirements to prevail in a denial of a speedy trial claim: length of delay; reason for delay; defendant's assertion of his right to speedy trial; and prejudice to defendant. Barker v. Wingo, 407 U.S. 514, 530, 92 S. Ct. 2182, 2192 (1972); State v. Wasson, 76 Hawai'i 415, 419, 879 P.2d 520, 524 (1994) (citing Barker).

The May 8, 2001 Judgment of the Circuit Court of the Fifth Circuit is affirmed.

DATED: Honolulu, Hawai'i, March 31, 2003.

On the briefs:

Daniel G. Hempey  
for defendant-appellant.

Russell K. Goo,  
Deputy Prosecuting Attorney,  
County of Kaua'i,  
for plaintiff-appellee.

Chief Judge

Associate Judge

Associate Judge