NOT FOR PUBLICATION

NO. 24601

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

STATE OF HAWAIʻI, Plaintiff-Appellant, v.
JOHN K. KEAWEMAUHILI, JR., Defendant-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 01-1-1048)

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

Plaintiff-Appellant State of Hawaiʻi (the State) appeals from the September 19, 2001 "Order Dismissing Entire Case With Prejudice." The State's appeal is authorized by Hawaii Revised Statutes (HRS) § 641-13(2) (1993), which permits the State to appeal in a criminal case from an order dismissing the case where the defendant has not been put in jeopardy. We vacate and remand for trial.

BACKGROUND

On April 26, 2001, Defendant-Appellee John K. Keawemauhili, Jr. (Keawemauhili), appeared in Wahiawa District Court for arraignment. Arraignment was postponed to allow Keawemauhili time to decide whether to waive or demand a jury trial. Keawemauhili appeared in Wahiawa District Court on May 10, 2001, and demanded a jury trial.

The Complaint filed by the State on May 14, 2001, charged that, on March 8, 2001, Keawemauhili committed the

offenses of (1) Driving Without No-Fault Insurance, HRS § 431:10C-104 (Supp. 2002), and (2) Driving Without License, HRS § 286-102 (Supp. 2002).

Keawemauhili appeared in the First Circuit Court on May 24, 2001, and pled not guilty. Judge Richard K. Perkins ordered pretrial motions to be filed by June 25, 2001, and set the case for trial during the week of July 9, 2001.

On June 12, 2001, Keawemauhili filed a "Request for Judicial Notice of Defendant's Nationality and of the Laws of Occupation; or in the Alternative Motion for Conditional Plea." Keawemauhili asked the court: (a) to take judicial notice that (i) he is a citizen of the Hawaiian Kingdom and is not an American Citizen, (ii) no international treaty of annexation has ever been completed between the United States of America and the Hawaiian Kingdom to properly transfer sovereignty over the lands of the Hawaiian Islands to the United States of America, and (iii) the United States of America is an Occupying Power of the Hawaiian Islands; and (b) to recognize that (i) his rights as a Hawaiian national are protected by the international laws of occupation, (ii) under the laws of the Hawaiian Kingdom, Keawemauhili has committed no crime, and (iii) this prosecution is illegal.

Alternatively, in the event his above-described request was denied, Keawemauhili agreed "to a Conditional Plea of no

contest on the condition that [Keawemauhili] is allowed to submit the attached Declaration of [Keawemauhili] along with the change of plea forms." The "attached Declaration" stated, in relevant part, as follows:

> 4. I prefer that this Court recognize my true nationality and apply the proper international laws that protect my rights, but in the event that this Court declines to do this, I am willing to enter into a conditional plea of no contest under the condition that my beliefs in regards to my nationality and my rights under Hawaiian Kingdom and international law be preserved in this Declaration. Furthermore I enter into this agreement under threat of imprisonment and in no way compromise or concede my nationality as a Hawaiian National.

On June 27, 2001, the State filed a memorandum in opposition to Keawemauhili's June 12, 2001 request. The State cited HRS Chapter 626, Hawai‘i Rules of Evidence, Rule 201 (Judicial Notice of Adjudicative Facts), State v. French, 77 Haw. 222, 228 (Haw. App. 1994), State v. Lorenzo, 77 Haw. 219 (Haw. App. 1994), and Hawai‘i Rules of Penal Procedure Rule 11(a)(2) (Conditional Pleas).

In relevant part, the following was stated at a hearing on July 2, 2001:

> [DEPUTY PROSECUTING ATTORNEY]: The State would be requesting a continuance. I believe defense counsel is stipping to this continuance for purposes of working out some kind of a deal or plea agreement.
>
> THE COURT: Did you say is stipulating?
>
> [DEFENSE COUNSEL]: We're not contesting it.
>
> THE COURT: Okay. Then I suppose you have nothing to add to that?
>
> [DEFENSE COUNSEL]: Just that the request of judicial notice of [Keawemauhili's] nationality will be continued as well.
>
> THE COURT: What is this in terms of, a 286-102(b)?

> [DEPUTY PROSECUTING ATTORNEY]: At this point I'm not sure because I was just handed the file. There was an agreement to this as far as the continuance is concerned.
>
> THE COURT: I'm reticent to impanel a jury on these charges and therefore notwithstanding that the State's request for the continuance is not being contested to [sic] the defense, it will be denied and the cases will be dismissed with prejudice.

On September 19, 2001, Judge Russell Blair entered the "Order Dismissing Entire Case With Prejudice."

POINT ON APPEAL

The State contends that Judge Blair abused his discretion when he sua sponte dismissed the case with prejudice. We agree.

RELEVANT PRECEDENT

> It is well-recognized that a court has inherent power to dismiss a case for want of prosecution in civil cases. In criminal cases, "the power of a court to dismiss a case on its own motion for failure to prosecute with due diligence is inherent[.]" Indeed, as pointed out supra, HRPP Rule 48 was merely "a restatement of the [already existing] inherent power of the court to dismiss a case for want of prosecution."
>
> A trial court's exercise of its inherent power to dismiss a criminal case with prejudice was upheld in State v. Moriwake, 65 Haw. 47, 647 P.2d 705 (1982). There, the court, relying on article VI, section 1 of the Hawai‘i Constitution pertaining to the "judicial power of the State[,]" and also citing HRS § 603-21.9 (1976) which grants courts the power to take steps "necessary" for the promotion of justice, found that the inherent power included the "power to administer justice." The court held that under this aspect of the judicial power, "trial courts have the power to dismiss sua sponte an indictment with prejudice and over the objection of the prosecuting attorney[ ] [w]ithin the bounds of duly exercised discretion[.]" The "parameters within which this discretion is properly exercised" requires a "'balancing [of] the interest of the state against fundamental fairness to a defendant with the added ingredient of the orderly functioning of the court system.'" . . . In the future, trial courts exercising this power should issue written factual findings setting forth their reasons for dismissal with prejudice so that a reviewing court may accurately assess whether the trial court duly exercised its discretion.

State v. Mageo, 78 Hawai‘i 33, 37, 889 P.2d 1092, 1096 (App. 1995) (citations and footnotes omitted; emphasis in original).

Emanating from its "power to administer justice," a trial court has limited inherent authority to dismiss criminal charges, sua sponte, with or without prejudice, for cause. State v. Moriwake, 65 Haw. 47, 55, 647 P.2d 705, 711-12 (1982). In Moriwake, the court stated that "[s]imply put, '[i]t is a matter of balancing the interest of the [S]tate against fundamental fairness to a defendant with the added ingredient of the orderly functioning of the court system.'" Id., 65 Haw. at 56, 647 P.2d at 712 (quoting State v. Braunsdorf, 98 Wis. 2d 569, 587, 297 N.W.2d 808, 817 (1980) (Day, J. dissenting)). However, it must be remembered that in Moriwake

> two full, nearly identical trials on a serious charge were held, following which two separate juries were unable to reach a verdict despite sound judicial efforts to encourage a "considered judgment." There was no indication that a third trial would proceed in a manner any different than the previous two.

Id. at 57, 647 P.2d at 713.

In commenting on the trial court's lack of inherent discretion to dismiss criminal charges sua sponte with prejudice without cause, the Hawai'i Supreme Court stated in State v. Alvey, 67 Haw. 49, 678 P.2d 5 (1984), in relevant part, as follows:

> Alvey has not cited a single authority for the proposition that a trial judge has the inherent power to dismiss an otherwise valid indictment prior to the defendant's first trial. Nor could we, for a judge's inherent power to dismiss an indictment is not so broad. . . .
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> . . . .
>
> . . . Judicial economy is . . . not a legitimate reason to dismiss an indictment prior to a defendant's first trial. Except where Moriwake-type considerations apply, dismissing an indictment just to ease a crowded docket is an abuse of discretion.

Alvey, 67 Haw. at 57-58, 678 P.2d at 10-11 (citation omitted).

The district court has the inherent discretion to dismiss criminal cases, civil cases, and traffic offenses, with or without prejudice, for want of prosecution. State v. Mageo, 78 Hawai'i 33, 37, 889 P.2d 1092, 1096 (App. 1995). The Braunsdorf balancing test quoted in Moriwake is the relevant test. Id. at 37-38, 889 P.2d at 1096-97 (citations omitted). Courts exercising this discretion "should issue written factual findings setting forth their reasons for dismissal with prejudice so that a reviewing court may accurately assess whether the trial court duly exercised its discretion." Id. at 38, 889 P.2d at 1097.

State v. Letuli, 99 Hawai'i 360, 362, 55 P.3d 853, 855 (App. 2002).

DISCUSSION

The State is authorized to pursue the charges in this case. In light of the precedent quoted above, Judge Blair did not have the discretion to dismiss the charges with prejudice on the basis of an unexplained "reticen[ce] to impanel a jury on these charges[.]" It follows that Judge Blair abused his discretion when he dismissed the charges with prejudice.

CONCLUSION

Accordingly, we vacate the September 19, 2001 "Order Dismissing Entire Case With Prejudice" and remand for trial in the courtroom of a judge other than Judge Blair.

DATED: Honolulu, Hawai‘i, March 18, 2003.

On the briefs:

Bryan K. Sano,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellant.

Chief Judge

Ninia Stacia Parks
for Defendant-Appellee.

Associate Judge

Associate Judge