

NO. 26937

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellant, v.
MICHAEL J. BUNTENBAH, Defendant-Appellee

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-CR. NOS. 04-1-1013 & 04-1-1014)

SUMMARY DISPOSITION ORDER

(By: Lim, Acting C.J., Foley and Nakamura, JJ.)

Plaintiff-Appellant the State of Hawai'i (the State), appeals from the Order of Dismissal With Prejudice (Order) filed in the Family Court of the First Circuit (family court)^{1/} in FC-Cr. No. 04-1-0013^{2/} on September 10, 2004. In the Order, the family court dismissed two counts of Refusal to Comply with a Lawful Order of a Police Officer, in violation of Hawaii Revised Statutes (HRS) § 709-906(1) and (4) (Supp. 2005), with which the State had charged Defendant-Appellee Michael J. Buntенbah (Buntенbah). As a point of error, the State contends the family court erred in its "Findings of Fact, Conclusions of Law and Order Granting Defendant's Motion to Dismiss Filed September 8,

^{1/} The Honorable Patrick W. Border presided.

^{2/} It appears from the record before this court that a motion to consolidate FC-Cr. No. 04-1-0013 with FC-Cr. No. 04-1-0014 (a charge of Harassment against Defendant-Appellee Michael J. Buntенbah (Buntенbah) arising out of the same incident) was filed and orally granted in the family court, but there is no written order in the record.

E.M. RIMANDO
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STATE OF HAWAII

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2004," filed on October 22, 2004, specifically Finding of Fact (FOF) 7 and Conclusions of Law (COLs) 4 through 8.

The State argues that FOF 7 was clearly erroneous because Buntenbah's second Motion to Dismiss, filed on September 8, 2004, did not allege that State v. Alvarez, 96 Hawai'i 42, 25 P.3d 817 (App. 2001), and State v. Wilson, 92 Hawai'i 45, 987 P.2d 268 (1999), were additional legal grounds for dismissal. Rather, the State contends, Buntenbah relied on the cases to support his claim that the warning form was incorrect, misleading, and defective as a matter of law.

Further, the State maintains that (1) COL 4 was wrong because The Honorable Rhonda A. Nishimura^{2/} (Judge Nishimura) had the inherent supervisory power to reduce the maximum authorized fine from \$2000 to \$1000 pursuant to HRS §§ 603-21.5(a)(1) (Supp. 2005) and 603-21.9(6) (1993); (2) COLs 5 and 6 were wrong because once Judge Nishimura reduced the maximum fine that could be imposed upon Buntenbah's conviction, the written warning citation no longer misstated the penalties for the offense; and (3) COLs 7 and 8 were wrong because, as the penalties were not misstated following Judge Nishimura's ruling, there was no need to inform the jury of the penalties for the offense and no possibility of

^{2/} The Honorable Rhonda A. Nishimura presided over the hearing on Buntenbah's first motion to dismiss his charges (filed March 9, 2004) and denied the motion by written order filed March 18, 2004.

Buntenbah's suffering any prejudice as a result of the written warning citation.

Upon careful review of the record and the briefs submitted by the parties, we hold that at the time Buntenbah received the warning citation, he was not clearly informed of the conditions of the cooling-off period because the fine reflected in the citation was incorrect. Therefore, the family court's COLs 5 and 6 are not wrong. Alvarez, 96 Hawai'i at 49-50, 25 P.3d at 824-25. Given that the penalty was misstated in the citation, the State's other arguments are moot.

Therefore,

IT IS HEREBY ORDERED that the Order of Dismissal With Prejudice filed in the Family Court of the First Circuit on September 10, 2004 is affirmed.

DATED: Honolulu, Hawai'i, April 21, 2006.

On the briefs:

Daniel Shimizu,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellant.

Arthur E. Ross,
for Defendant-Appellee.



Acting Chief Judge



Associate Judge



Associate Judge