

NO. 27632

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
DAVID K. HEWAHEWA, Defendant-Appellant

E. M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT,
WAILUKU DIVISION
(CASE NO. TR21:09-30-05)

MEMORANDUM OPINION

(By: Recktenwald, C.J., Foley and Fujise, JJ.)

Defendant-Appellant David K. Hewahewa (Hewahewa) appeals from the Judgment filed in the District Court of the Second Circuit, Wailuku Division, (district court) on September 30, 2005.^{1/} Hewahewa entered a conditional plea of no contest to a single count of Operating a Vehicle Under the Influence of an Intoxicant (OVI), in violation of Hawaii Revised Statutes (HRS) § 291E-61 (Supp. 2004). The district court imposed fees and fines totaling \$562 and ordered Hewahewa to attend 14 hours of substance abuse rehabilitation classes.

On appeal, Hewahewa argues that the district court reversibly erred by denying his "Motion to Dismiss Complaint with Prejudice for Violation of Rule 48, Hawai'i Rules of Penal Procedure" (Motion to Dismiss). For the reasons set forth below, we agree and vacate the decision of the district court.

I. BACKGROUND

On February 17, 2005, the State of Hawai'i (State) filed a complaint, charging Hewahewa with one count of OVI (Count One); two counts of Disregarding Longitudinal Traffic Lane

^{1/} Per diem District Court Judge Barclay E. MacDonald presided.

Markings, in violation of HRS § 291C-38 (1993) (Counts Two and Three); and Noncompliance with Speed Limit, in violation of HRS § 291C-102(a) (Supp. 2004) (Count Four). On May 27, 2005, Hewahewa appeared for trial before per diem District Court Judge Mary B. Johnston. However, Judge Johnston continued the case until September 30, 2005 due to a congested court calendar. Judge Johnston stated: "Well, the Court's going to move it off and charge it to the Court."

On September 30, 2005, the parties appeared for trial before per diem District Court Judge Barclay E. MacDonald, and Hewahewa filed his Motion to Dismiss in open court. Hewahewa based his motion on Hawaii Rules of Penal Procedure (HRPP) Rule 48(b) and its requirement that 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 . . . from the date of arrest if bail is set or from the filing of the charge," whichever occurs sooner. Hewahewa argued that the district court's reasoning for continuing the trial did not constitute "exceptional circumstances" justifying a trial date more than six months from the filing of charges.^{2/}

The district court denied the motion, finding that the Court being unable to proceed because of other -- other trials are going at the same time is an exceptional circumstance. That the -- that the -- driving under the influence is a jailable offense and, therefore, a serious charge.

And I -- so, I will find that under [HRPP Rule 48(c)(2)] that the period of continuance from [May] 27th until today is -- is an excludable period, and that we are -- and -- and will deny the motion on -- that basis."

Judge MacDonald also appeared to believe that he, and not Judge Johnston, had presided over the May 27 proceedings.

^{2/} Hawaii Rules of Penal Procedure (HRPP) Rule 48(c)(2) excludes from the calculation of the six-month window "periods that delay the commencement of trial and are caused by congestion of the trial docket when the congestion is attributable to exceptional circumstances[.]"

After discussion with his attorney, Hewahewa entered a conditional no-contest plea, reserving his right to appeal the district court's ruling on the Motion to Dismiss. The State dismissed all charges other than the OVI count. The district court entered Judgment on September 30, 2005. On November 21, 2005, Hewahewa timely filed his notice of appeal.

II. STANDARD OF REVIEW

HRPP Rule 48

We review a trial court's denial of a Hawai'i Rules of Penal Procedure (HRPP) Rule 48 motion to dismiss under both the "clearly erroneous" and "right/wrong" tests:

A trial court's findings of fact (FOFs) in deciding an HRPP 48(b) motion to dismiss are subject to the clearly erroneous standard of review. An FOF is clearly erroneous when, despite evidence to support the finding, the appellate court is left with the definite and firm conviction that a mistake has been committed. However, whether those facts fall within HRPP 48(b)'s exclusionary provisions is a question of law, the determination of which is freely reviewable pursuant to the "right/wrong" test.

State v. Samonte, 83 Hawai'i 507, 514, 928 P.2d 1, 8 (1996) (quoting State v. Hutch, 75 Haw. 307, 328-29, 861 P.2d 11, 22 (1993)).

III. DISCUSSION

Hewahewa argues that the district court reversibly erred in denying his Motion to Dismiss because more than six months had elapsed from the date of his arrest on January 15, 2005 until the commencement of trial on September 30, 2005.^{3/} Hewahewa's argument hinges on whether the continuance time from May 27, 2005 (the original trial date) until September 30, 2005 should be excluded from the six-month period pursuant to HRPP

^{3/} Hewahewa also argues that the district court clearly erred by concluding that Judge MacDonald and not Judge Johnston presided over the May 27, 2005 proceedings. Although Judge MacDonald did clearly err in so believing, this error does not affect our analysis and is so immaterial as to be harmless.

Rule 48(c)(2), which excludes continuances caused by "exceptional circumstances." If the time period can be excluded under HRPP Rule 48(c)(2), then Hewahewa's motion was correctly denied; but, if not, then the motion should have been allowed.

Mere court congestion does not constitute "exceptional circumstances" within the meaning of HRPP Rule 48. State v. Caspino, 73 Haw. 256, 257, 831 P.2d 1334, 1335 (1992); State v. Kahawai, 9 Haw. App. 205, 831 P.2d 936 (1992). The State concedes this point. When the district court continued the case on May 27, 2005, it cited only court congestion as the reason. The State concedes this as well. Hewahewa and the State agree that the time period between May 27, 2005 and September 30, 2005 cannot be excluded pursuant to HRPP Rule 48, and, therefore, the district court reversibly erred by denying Hewahewa's Motion to Dismiss. We agree and reiterate the rule that mere court congestion does not constitute "exceptional circumstances" within the meaning of Rule 48(c)(2). The district court should have granted Hewahewa's Motion to Dismiss.

IV. CONCLUSION

Based on the foregoing, we vacate the Judgment entered on September 30, 2005 in the District Court of the Second Circuit, Wailuku Division, and remand this case for dismissal.

DATED: Honolulu, Hawai'i, July 16, 2007.

On the briefs:

Hayden Aluli
for Defendant-Appellant.

Gerald K. Enriquez,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellee.


Chief Judge


Associate Judge


Associate Judge