DISSENTING OPINION BY NAKAMURA, J.

The record indicates that Defendant-Appellant Eric Kanoa Shannon was present in court, was represented by counsel, and received oral notice of the conditions of his deferred acceptance of guilty (DAG) plea.[1] Shannon does not contend that the district court failed to give him oral notice of the DAG conditions, nor does he contend that he was unaware of those conditions. Instead, relying on State v. Lee, 10 Haw. App. 192, 862 P.2d 295 (1993), Shannon claims that because he did not receive written notice of the DAG conditions, the district court could not revoke his DAG plea for violating the DAG conditions.

In my view, a defendant who has actual notice or knowledge of the condition of a DAG plea should not be allowed to avoid punishment for violating those conditions simply because the defendant was not provided with written notice. Accordingly, I dissent from the majority's decision to invalidate the revocation of Shannon's DAG plea because he did not receive a written copy of his DAG conditions.

I acknowledge that my view is inconsistent with this court's decision in Lee. This court held in Lee that the defendant's probation could not be revoked where the defendant had actual, but not written, notice of the conditions of his probation. Id. at 197-98, 862 P.2d at 297-98. This court based its decision upon Hawaii Revised Statutes (HRS) 706-624(3) (Supp. 1992), which provided:

> Written statement of conditions. The defendant shall be given a written copy of any [conditions of probation], stated with sufficient specificity to enable the defendant to guide the defendant's self accordingly.

Lee, 10 Haw. App. at 197-98, 862 P.2d at 297-98.

I disagree with Lee, however, and would follow the approach taken by the federal courts under similar circumstances.

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[1] As noted by the majority, the district court calendar reflects that the district court orally apprised Defendant-Appellant Eric Kanoa Shannon of the conditions of his deferred acceptance of guilty (DAG) plea when it granted his motion for a DAG plea. The calendar also reflects that Shannon was present and represented by counsel at that hearing.

Federal law requires that defendants sentenced to a term of supervised release[2] be provided with written notice of the conditions of release. Section 3583(f) of Title 18, United States Code, provides:

> **Written statement of conditions.**--The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

(Emphasis added.) In addition, Section 3603(1) of Title 18, United States Code, provides:

> A probation officer shall--
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> (1) instruct a probationer or a person on supervised release, who is under his supervision, as to the conditions specified by the sentencing court, and provide him with a written statement clearly setting forth all such conditions[.]

(Emphasis added.)

Federal courts have been confronted with the question of whether the failure to provide the defendant with written notice of the conditions of supervised release, as required by statute, automatically invalidates the trial court's revocation of the defendant's supervised release. In United States v. Arbizu, 431 F.3d 469 (5th Cir. 2005), the United States Court of Appeals for the Fifth Circuit noted that every other circuit court to address this issue had held that the "government's failure to provide the notice required by the statutes does not limit the [trial] court's authority to revoke supervised release where the defendant had actual notice of the release terms." Id. at 470. The Fifth Circuit joined the other circuits, explaining its reasoning as follows:

> The purpose of [18 U.S.C.] §§ 3583(f) and 3603(1) is to ensure that the defendant is notified of the conditions of his supervised release. Congress decided that requiring the probation officer to

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[2] The term of supervised release is served following the defendant's term of incarceration. 18 U.S.C. § 3583. The sentencing court imposes conditions to which the defendant must comply while on supervised release. Id. If a defendant violates a condition of supervised release, the court may (and for certain conditions must) revoke the term of supervised release and require the defendant to serve an additional period of incarceration. Id.

> provide the defendant with written notice of the conditions is the best way to ensure the defendant knows what is expected of him during the supervised release period. It would be patently unfair to revoke a defendant's supervised release and send him back to prison for violating conditions of the release that he had no way of knowing existed.
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> Congress, however, did not decide that a defendant who does not receive the proper written notice should be immune from revocation of supervised release. A defendant who knows that his supervised release terms bar certain conduct should not be allowed to engage in that conduct and then hide behind the government's failure to follow statutory notice procedures during sentencing.
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> We conclude, therefore, that failure to provide written notice of the conditions of supervised release does not automatically invalidate a revocation of such release if the defendant received actual notice of the conditions imposed.

Id. at 471.

I find this reasoning persuasive and therefore disagree with the majority's decision to automatically invalidate the revocation of Shannon's DAG plea because he did not receive written notice of his DAG conditions. I conclude that Shannon's other points of error do not warrant overturning the judgment entered by the district court. Accordingly, I respectfully dissent.

Craig H. Nakamura