

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER

NO. 29265

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
v.
JERRY J. AVILLA, Defendant-Appellant

KHAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2009 APR 20 AM 7:51

FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-CR NO. 04-1-1639)

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Watanabe and Nakamura, JJ.)

Defendant-Appellant Jerry J. Avilla appeals from the Order of Resentencing and Revocation of Probation filed on June 20, 2008 in the Family Court of the First Circuit (family court).¹

On appeal, the sole issue raised by Avilla is whether the family court abused its discretion by denying Avilla's motion to terminate Avilla's probation on the grounds that a delay in serving the warrant violated Hawai'i Rules of Penal Procedure Rule 9(c)(3)(i), which requires execution of a warrant "without unnecessary delay."

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Avilla's point of error as follows:

The family court did not abuse its discretion in denying the motion. State v. Lei, 95 Hawai'i 278, 281, 21 P.3d 880, 883 (2001); State v. Mageo, 78 Hawai'i 33, 39, 889 P.2d 1092, 1098 (App. 1995). In order for the family court's decision

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The Honorable Wilson M. N. Loo presided.

to be an abuse of discretion, Avilla must show that the family court "clearly exceed[ed] the bounds of reason or disregard[ed] rules or principles of law or practice to the substantial detriment of a party litigant." Lei, 95 Hawai'i at 281, 21 P.3d at 883 (quoting State v. Klinge, 92 Hawai'i 577, 584, 994 P.2d 509, 516 (2000)). The family court considered both Lei and Mageo and determined that the delay in serving the warrant did not require dismissal. In so doing, the court did not exceed the bounds of reason or disregard rules or principles of law or practice to the substantial detriment of Avilla. Therefore,

IT IS HEREBY ORDERED that the Order of Resentencing and Revocation of Probation filed on June 20, 2008 is affirmed.

DATED: Honolulu, Hawai'i, April 20, 2009.

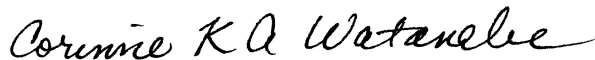
On the briefs:

Jon N. Ikenaga,
Deputy Public Defender,
for Defendant-Appellant.

Anne K. Clarkin,
Deputy Prosecuting Attorney,
City & County of Honolulu,
for Plaintiff-Appellee.



Chief Judge



Associate Judge



Associate Judge