

*** NOT FOR PUBLICATION ***

NO. 27310

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,

vs.

MICHAEL N. MOLINA, Defendant-Appellant.

EM. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2006 JUL 13 AM 9:25

FILED

APPEAL FROM THE FIRST CIRCUIT COURT
(CASE NO. AB 2000-084 (2-99-02723))

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Defendant-Appellant Michael Molina ("Molina") specifically appeals from the September 16, 2004 Findings of Fact, Conclusions of Law, and Order of the Circuit Court of the First Circuit ("circuit court")¹ denying Molina's motion to dismiss due to violation of the "speedy trial rule" set forth by Hawai'i Rules of Penal Procedure ("HRPP") Rule 48 (2000).²

¹ The Honorable Judges Karl Sakamoto, Barbara Richardson, Richard Perkins, and Marcia Waldorf presided. Judge Waldorf filed the Findings of Fact, Conclusions of Law, and Order at issue in this appeal.

² HRPP 48 ("Dismissal") provides in pertinent part:

(b) By Court. Except in the case of traffic offenses that are not punishable by imprisonment, the court shall, on motion of the defendant, dismiss the charge, with or without prejudice in its discretion, if trial is not commenced within six months:

(1) from the date of arrest if bail is set or from the filing of the charge, whichever is sooner, on any offense based on the same conduct or arising from the same criminal episode for which the arrest or charge was made[.]

. . . .

(c) Excluded Periods. The following periods shall be excluded in computing the time for trial commencement:

(1) periods that delay the commencement of trial and are caused by collateral or other proceedings concerning the defendant, including but not limited to penal

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irresponsibility examinations and periods during which the defendant is incompetent to stand trial, pretrial motions, interlocutory appeals and trials of other charges;

(2) periods that delay the commencement of trial and are caused by congestion of the trial docket when the congestion is attributable to exceptional circumstances;

(3) periods that delay the commencement of trial and are caused by a continuance granted at the request or with the consent of the defendant or defendant's counsel;

(4) periods that delay the commencement of trial and are caused by a continuance granted at the request of the prosecutor if:

(i) the continuance is granted because of the unavailability of evidence material to the prosecution's case, when the prosecutor has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at a later date; or

(ii) the continuance is granted to allow the prosecutor additional time to prepare the prosecutor's case and additional time is justified because of the exceptional circumstances of the case;

(5) periods that delay the commencement of trial and are caused by the absence or unavailability of the defendant;

(6) the period between a dismissal of the charge by the prosecutor to the time of arrest or filing of a new charge, whichever is sooner, for the same offense or an offense required to be joined with that offense;

(7) a reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance; and

(8) other periods of delay for good cause.

(d) Per Se Excludable and Includable Periods of Time for Purposes of Subsection (c)(1) of This Rule.

(1) For purposes of subsection (c)(1) of this rule, the period of time, from the filing through the prompt disposition of the following motions filed by a defendant, shall be deemed to be periods of delay resulting from collateral or other proceedings concerning the defendant: motions to dismiss, to suppress, for voluntariness hearing heard before trial, to sever counts or defendants, for

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At trial, Molina was found guilty of unauthorized control of a propelled vehicle in violation of HRS § 708-836 (2001),³ but that conviction is not being challenged on appeal.

The present appeal concerns, and the outcome thereof hinges upon, a single issue: Whether or not the 76-day period of time between Molina's change of plea from "not guilty" to "no contest" and his subsequent withdrawal of the "no contest" plea was properly excluded time for purposes of the HRPP 48(b) speedy trial rule under HRPP 48(c)(8) (2000), see supra note 2, where:

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disqualification of the prosecutor, for withdrawal of counsel including the time period for appointment of new counsel if so ordered, for mental examination, to continue trial, for transfer to the circuit court, for remand from the circuit court, for change of venue, to secure the attendance of a witness by a material witness order, and to secure the attendance of a witness from without the state.

(2) For purposes of subsection (c)(1) of this rule, the period of time, from the filing through the prompt disposition of the following motions or court papers, shall be deemed not to be excluded in computing the time for trial commencement: notice of alibi, requests/motions for discovery, and motions in limine, for voluntariness hearing heard at trial, for bail reduction, for release pending trial, for bill of particulars, to strike surplusage from the charge, for return of property, for discovery sanctions, for litigation expenses and for depositions.

(Emphases added.)

³ HRS § 708-836 provides in pertinent part:

(1) A person commits the offense of unauthorized control of a propelled vehicle if the person intentionally or knowingly exerts unauthorized control over another's propelled vehicle by operating the vehicle without the owner's consent or by changing the identity of the vehicle without the owner's consent.

(2) "Propelled vehicle" means an automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle.

.....

(5) Unauthorized control of a propelled vehicle is a class C felony.

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(1) the "no contest" plea was based upon a mistaken understanding by the parties that Molina would not be subject to mandatory minimum sentencing by so pleading; (2) the parties failed to recognize a clerical error on Molina's "rap sheet" which led to this erroneous belief; (3) Plaintiff-Appellee State of Hawai'i ("the prosecution") moved for mandatory minimum sentencing after realizing the clerical error; and (4) the circuit court granted Molina's oral motion to withdraw his "no contest" plea following the motion for enhanced sentencing.⁴

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold as follows:

First, the circuit court did not clearly err in entering its findings of fact. State v. Samonte, 83 Hawai'i 507, 514, 928 P.2d 1, 8 (1996). It is undisputed from the record that:

(a) Both the prosecution and Molina failed to realize that the November 12, 1993 HRS §134-7(b) prohibited possession of firearms conviction was improperly coded as a "misdemeanor" on the "rap sheet" that both received and reviewed;

(b) Due to this mutual mistake of fact, Molina changed his plea from "not guilty" to "no contest" on October 22, 2003, where neither party believed that Molina was subject to mandatory minimum sentencing under HRS § 706-606.5;

(c) Only in the intervening time period between the change of plea and the January 7, 2004 sentencing hearing did it

⁴ Molina was statutorily subject to a mandatory minimum term of one year and eight months because he had been convicted of prohibited ownership, possession or control of a firearm in violation of HRS § 134-7(b) (1993) on November 12, 1993 (a class B felony), less than ten years before committing the June 11, 2003 class C felony offense of unauthorized control of a propelled vehicle (of which he was ultimately convicted). HRS §§ 706-606.5(1)(a)(iv) and 706-606.5(2)(d) (1999).

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come to light that the class B felony had been improperly classified as a misdemeanor;

(d) The prosecution, the defense, and the court had no part in the preparation or maintenance of the "rap sheet"; and

(e) The prosecution first learned of the class B felony "qualifying" Molina for mandatory minimum sentencing on December 26, 2003, less than two weeks prior to the January 7, 2004 sentencing hearing.

On account of these undisputed facts, the circuit court did not clearly err in finding that (1) Molina's November 12, 2003 firearms conviction was not coded as a felony conviction on the "rap sheet," (2) the "rap sheet" was misinterpreted by the parties, (3) the resulting misinterpretation was not intended to delay trial, (4) the parties merely intended to "take trial off track by agreement" based on their view of the circumstances, (5) it was at least generally unforeseeable that the rap sheet might be incorrectly encoded, (6) a computer glitch may have been to blame, (7) a person reviewing the rap sheet records would usually have corrected it but might not have, (8) while it should almost always be clear whether a defendant is subject to mandatory minimum sentencing at the time he or she enters a plea, it was unanticipated and unforeseeable that Molina's "rap sheet" would be misinterpreted, and (9) any harm was cured by allowing Molina to withdraw his plea, such that (10) the 76-day time period at issue was excludable for good cause under HRPP 48(c)(8) on account of the delay being unanticipated and unforeseeable, and (11) an HRPP 48(b) violation had not yet occurred.

Second, the circuit court correctly concluded that HRPP Rule 48 was not violated. Samonte, 83 Hawai'i at 514, 928 P.2d at 8 (1996). More specifically, the circuit court properly determined the 76-day time period between Molina's change of plea

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and subsequent retraction of that plea was excludable from the speedy trial time calculation for good cause under HRPP 48(c)(8). The mistaken belief that Molina was not subject to mandatory minimum sentencing constituted a substantial reason for delay of trial which afforded a legal excuse for such delay. State v. Senteno, 69 Haw. 363, 368-69, 742 P.2d 369, 373 (1987). At the time, the parties were under the impression that the case would bypass trial entirely and go straight to sentencing. We also agree with the circuit court that it was unanticipated by the parties that Molina's November 12, 1993 conviction, the sole determinant of enhanced sentencing, would be misidentified as a misdemeanor, leading to the mutually mistaken belief that Molina could plead "no contest" without being subject to mandatory minimum sentencing. See State v. Gillis, 63 Haw. 285, 288, 626 P.2d 190, 192-93 (1981). And while humans and computer systems alike are subject to errors and glitches, respectively, we believe it was nonetheless reasonably unforeseeable that the November 12, 1993 conviction would be miscoded, given the verification and correction process that a rap sheet is presumably subject to. See State v. Hanawahine, 69 Haw. 624, 630-31, 755 P.2d 466, 469-70 (1988). Consequently, the circuit court did not err in denying Molina's HRPP 48(b) motion to dismiss.⁵

⁵ Molina alternatively argues in his Opening Brief that in the event this court were to affirm the circuit court's order denying his HRPP 48(b) motion to dismiss, this court should "remand . . . his case for resentencing to an indeterminate term of imprisonment for five (5) years, the maximum term of imprisonment when he knowingly and voluntarily entered his plea on October 22, 2003[,] because "[t]his remedy would be a rational, sensible and practical interpretation to accomplish the purposes of Rule 48."

This argument fails for three independent reasons. First, no corresponding point of error is asserted, such that we may decline to consider this argument. HRAP 28(b)(4) (2004) ("Points not presented . . . will be disregarded.") Second, Molina's contention that he was "completely foreclosed from receiving the sentence he had originally anticipated when he entered his plea of no contest[]" ignores the reality that he was statutorily subject to

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Therefore,

IT IS HEREBY ORDERED that the circuit court's September 16, 2004 order denying Molina's HRPP 48(b) motion to dismiss is affirmed.

DATED: Honolulu, Hawai'i, July 13, 2006.

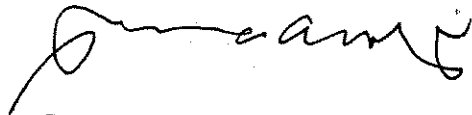
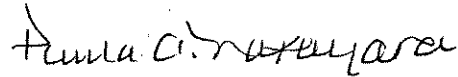
On the briefs:

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State of Hawai'i



Steven Steinson



Brian R. Vincent, Sr.

⁵(...continued)
mandatory minimum sentencing because the June 11, 2003 class C felony offense (unauthorized control of a propelled vehicle in violation of HRS § 708-836), of which he was ultimately convicted, was committed less than ten years before his prior "qualifying" class B felony firearms conviction on November 12, 1993. See HRS §§ 706-606.5(1)(a)(iv) and 706-606.5(2)(d). Third, Molina's claim that "[i]t would not further the purpose of [HRPP] 48 to permit the State to benefit from its own mistakes which result in prejudice to a defendant and cause a delay in the trial proceedings" is fatally flawed because (1) the mistake of misinterpreting Molina's rap sheet was committed by both parties, (2) Molina was not prejudiced because his April 27, 2005 conviction specifically grants him credit for time served, (3) the "delay of trial" was due to a mutual misunderstanding by the parties that the case would bypass trial and be taken straight to sentencing, and (4) the circuit court correctly ruled that there was good cause for the delay.