

NO. 26495

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellant,

vs.

WARREN WON HO KE, Defendant-Appellee.

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APPELLATE COURTS

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FILED

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT  
(REPORT NO. G-93151)

SUMMARY DISPOSITION ORDER

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

Plaintiff-Appellant State of Hawai'i ("prosecution"), appeals from the first circuit district court's<sup>1</sup> ("district court") April 1, 2004 order dismissing CIT. NO. G-93151 without prejudice.<sup>2</sup> On appeal, the prosecution contends that the prosecuting attorney's failure to appear at a pretrial hearing did not warrant dismissal under either Rules of the District Courts of Hawai'i ("RDCH") Rule 15(b)<sup>3</sup> or the district court's

<sup>1</sup> The Honorable Matthew S.K. Pyun presided.

<sup>2</sup> The prosecution filed a complaint on December 26, 2003 charging Warren Won Ho Ke ("Ke") with four counts of the offense of False Swearing In Official Matters, in violation of HRS § 710-1061(1)(a). HRS § 710-1061(1)(a) (1993) provides that "[a] person commits the offense of false swearing in official matters if the person makes, under an oath required or authorized by law, a false statement which the person does not believe to be true, and . . . [t]he statement is made in an official proceeding[.]" The offense is a misdemeanor. See HRS § 710-1061(2) (1993) ("False swearing in official matters is a misdemeanor.").

<sup>3</sup> RDCH Rule 15(b) (2004) states that

[a]n attorney who, without just cause, fails to appear when the attorney's case is before the court on a call or motion or on pre-trial or trial, or unjustifiably fails to prepare for a presentation to the court necessitating a continuance, may be subject to such sanction as the court deems appropriate, including  
(continued...)

inherent powers.

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 that the prosecution has failed to demonstrate that the district court abused its discretion.<sup>4</sup>

It is well-settled that the district court has the inherent authority to dismiss a criminal case. See State v. Mageo, 78 Hawai'i 33, 37, 889 P.2d 1092, 1096 (App. 1995) ("A trial court's exercise of its inherent power to dismiss a criminal case with prejudice was upheld in State v. Moriwake, 65 Haw. 47, 647 P.2d 705 (1982)."). Thus, "the crucial question is not the existence of power, but the propriety of its exercise on the facts of a particular case." State v. Braunsdorf, 297 N.W.2d 808, 818 (Wis. 1980) (Day, J., dissenting).

Here, the district court granted Ke's motion to dismiss the prosecution's case without prejudice because the prosecuting attorney failed to appear at a scheduled pretrial hearing and failed to make arrangements for another to appear in his stead. The prosecution contends that the district court should have granted a continuance and imposed sanctions against the prosecuting attorney as opposed to dismissing the case. While

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<sup>3</sup>(...continued)  
an award of reasonable attorney's fees.

<sup>4</sup> We review a trial court's dismissal of an indictment for an abuse of discretion. See State v. Kim, 109 Hawai'i 59, 62, 122 P.3d 1157, 1160 (App. 2005) ("A trial court's ruling on a motion to dismiss an indictment is reviewed for an abuse of discretion.") (Citing State v. Mendonca, 68 Haw. 280, 283, 711 P.2d 731, 734 (1985).).

the district court would certainly have been within its discretion to sua sponte deny the motion and continue the matter, under the present circumstances we do not believe that it "exceeded the bounds of reason" or "disregarded rules or principles of law or practice to the substantial detriment of a party litigant" by granting the motion. Office of Hawai'ian Affairs v. State, 110 Hawai'i 338, 351, 133 P.3d 767, 780 (2006) (citing Ranger Ins. Co. v. Hinshaw, 103 Hawai'i 26, 30, 79 P.3d 119, 123 (2003)).

The prosecution attempts to enhance our scrutiny of the district court's ruling by characterizing it as a dismissal with prejudice.<sup>5</sup> The prosecution asserts that the district court's ruling must be construed as a dismissal with prejudice, insofar as the two-year statute of limitations set forth in HRS § 701-108(2)(e),<sup>6</sup> for all practical purposes, precluded the prosecution from refileing the complaint. However, that contention is belied

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<sup>5</sup> A dismissal with prejudice would have required the district court to "balanc[e] the interest of the state against fundamental fairness to a defendant with the added ingredient of the orderly functioning of the court system." Moriwake, 65 Haw. at 56, 647 P.2d at 712 (quoting Braunsdorf, 297 N.W.2d at 817). In such situations, we have also admonished trial courts to issue written findings of fact and conclusions of law. See id. at 57 n.16, 647 P.2d at 713 n.16 ("Because of the nature of criminal proceedings, and because they are in the interests and for the protection of the public, there is a sound basis in public policy for requiring the judge who assumes the serious responsibility of dismissing a case to set forth his reasons for doing so in order that all may know what invokes the court's discretion and whether its action is justified.") (Quoting Salt Lake City v. Hanson, 425 P.2d 773, 775 (Utah 1967).); Mageo, 78 Hawai'i at 38, 889 P.2d at 1097 ("In the future, trial courts exercising this power should issue written factual findings setting forth their reasons for dismissal with prejudice so that a reviewing court may accurately assess whether the trial court duly exercised its discretion.").

<sup>6</sup> HRS § 701-108(2)(e) (Supp. 2001) states that "[a] prosecution for a misdemeanor or parking violation must be commenced within two years after it is committed[.]"

by the fact that the statutory deadline fell on a Saturday, thus allowing the prosecution to refile the following Monday.<sup>7</sup> The prosecution's failure to refile its complaint foreclosed its ability to prosecute Ke, not the district court's dismissal without prejudice. Therefore,

IT IS HEREBY ORDERED that the final order from which the appeal is taken is affirmed.

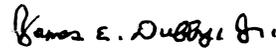
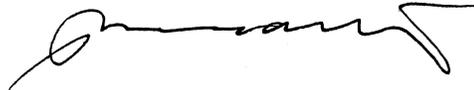
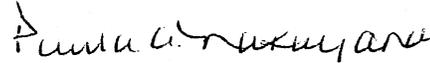
DATED: Honolulu, Hawai'i, February 7, 2007.

On the briefs:

Loren J. Thomas, Deputy  
Prosecuting Attorney and  
Nicole C. Wipp, Law Clerk  
on the brief, for plaintiff-  
appellant



Dayna-Ann A. Mendonca,  
Deputy Public Defender,  
for defendant-appellee



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<sup>7</sup> The complaint alleged that the conduct for which Ke was being charged occurred on or about December 27, 2001. The complaint was filed on December 26, 2003. The statute of limitations was tolled during the pendency of the prosecution. See HRS § 701-108(6)(b) (Supp. 2001) ("The period of limitation does not run . . . [d]uring any time when a prosecution against the accused for the same conduct is pending in this State[.]"). The district court dismissed the case on March 5, 2004. When the matter was dismissed, the statute of limitations began to run, affording the prosecution until March 6, 2004 to refile its complaint. Because March 6, 2004 fell on a Saturday, the deadline was extended to March 8, 2004, the following Monday. See HRS § 1-29 (1993) ("The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a Sunday or holiday and then it is also excluded. When so provided by the rules of court, the last day also shall be excluded if it is a Saturday.") (Emphasis added.); HRPP Rule 45 (2004) ("The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a holiday.").