

DISSENT BY ACOBA, J.

I would grant certiorari in this case.

As recounted by the Intermediate Court of Appeals, Petitioner/Defendant-Appellant Erik Barend Deryke (Deryke) argues that "the district court adopted an improper policy of not dismissing any charges for failure to prosecute unless more than two years had elapsed between issuance and service of the bench warrant." State v. Deryke, 113 Hawai'i 120, 123, 148 P.3d 1222, 1225 (App. 2006). Hawai'i Rules of Penal Procedure (HRPP) Rule 9 requires that bench warrants "shall be executed without unnecessary delay by the arrest of the defendant." HRPP Rule 9(c)(3)(i) (emphasis added). The district court defined the time limitation of "unreasonable delay" by ruling that any period of less than two years did not constitute "unnecessary delay":

[T]wo years is the cutoff point for purposes of determining reasonableness of action by the State [and the c]ourt will follow that two year limitation until . . . the [c]ourts are given further information by the appellate court [so the court] is going to deny the motion as not being in violation of [HRPP] Rule 9.

Deryke, 113 Hawai'i at 123, 148 P.3d at 1225 (emphasis added).

The district court's exercise of its inherent power to dismiss traffic violations for failure to prosecute is reviewed under the abuse of discretion standard. State v. Lei, 95 Hawai'i 278, 281, 21 P.3d 880, 883 (2001) (citing State v. Mageo, 78 Hawai'i 33, 889 P.2d 1092 (App. 1995)). Abuse of discretion occurs when it "appear[s] that the court clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant."

State v. Solomon, 107 Hawai'i 117, 126, 111 P.3d 12, 21 (2005) (internal quotation marks and citations omitted).

The district court abused its discretion when it denied Deryke's Motion to Dismiss inasmuch as the court adopted a rule setting a two-year time period for the State to act. Although the power of the court to dismiss traffic violations is discretionary, Lei, 95 Hawai'i at 281, 21 P.3d at 883, discretionary power "must be exercised on a case-by-case basis, not by any inflexible blanket policy of denial[,] "State v. Martin, 56 Haw. 292, 294, 535 P.2d 127, 128 (1975) (citations omitted). In Lei, this court relied on the factors articulated in Mageo, which "focused primarily upon whether the defendant was amenable to service while the penal summonses were outstanding and whether there was a reason for the delay in serving the summonses[,] " in holding that the district court should have dismissed the charges against the defendant for failure to prosecute with due diligence. 95 Hawai'i at 285-87, 21 P.3d at 887-89.

Thus, the two-year time hurdle set by the court is inconsistent with the concept of discretionary power because it does not allow the court flexibility to individually evaluate cases with delays until two years have elapsed. In this case, the district court erred by adopting a policy of not dismissing the eighteen-month delay between the issuance of the bench warrant and Deryke's court appearance because the length of delay was less than the court's two-year time requirement. The court should have exercised its discretion to weigh the facts and circumstances of this particular case rather than to rely on a

two-year rule.

I agree with the ICA dissenting opinion that the district court committed reversible error when it "did not consider the other factors set forth in Lei and expressly relied on a two-year bright line rule." Deryke, 113 Hawai'i at 126, 148 P.3d at 1228 (Foley, J., dissenting). This court should follow the precedent set forth by Lei. Lei ruled that the district court had abused its discretion when it did not dismiss the charges against the defendant. 95 Hawai'i at 285-87, 21 P.3d at 887-89. As previously noted, in rendering this ruling, this court weighed the State's interest in punishing criminal conduct with the harm resulting from the State's failure to timely prosecute. Id. at 285, 21 P.3d at 887.

Multiple factors such as the large volume of outstanding bench warrants, the defendant's amenability to service, and the State's diligence were considered. Id. at 286-87, 21 P.3d at 888-89. In contrast to the case at hand, Lei did not define "unreasonable delay" by way of a two-year bright line rule. Deryke, 113 Hawai'i at 126, 148 P.3d at 1228 (Foley, J., dissenting) (citing Lei, 95 Hawai'i at 286 n.7, 21 P.3d at 888 n.7). Hence, the dissenting opinion in Deryke is correct to note that "[t]he district court in the instant case should have engaged in a similarly multifaceted inquiry" rather than relying on a two-year bright line rule. Id. (Foley, J., dissenting).

For the foregoing reasons, I believe this case warrants further review and I would grant certiorari.

A handwritten signature in black ink, appearing to be a stylized name, possibly "J. Foley", written in a cursive script.