

NO. 24191

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellant, v.  
TERRENCE CENIDO, Defendant-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CR. NO. 00-01-2059)

MEMORANDUM OPINION

(By: Burns, C.J., Watanabe, J., and  
Circuit Judge Hirai, in place of Lim, J., recused)

In this case, Cr. No. 00-01-2059, Plaintiff-Appellant State of Hawai'i (the State) appeals from the judgment entered on March 6, 2001 (Judgment), by Circuit Court Judge Marie N. Milks against Defendant-Appellee Terrence Cenido (Cenido). The Judgment, *inter alia*, credited Cenido with time served dating back to August 9, 2000. The State asserts that Cenido is entitled to credit for time served dating back to August 31, 2000, the date on which he was taken into custody for the offenses charged in this case. We agree with the State.

BACKGROUND

On November 10, 1998, Cenido was (1) arrested for (a) the charges later asserted in Cr. No. 00-01-2059 and (b) the violation of his parole in State v. Cenido, Cr. Nos. 97-1986 and 99-2101, Circuit Court of the First Circuit, State of Hawai'i,

and (2) released from custody regarding (1) (a) but continued in custody regarding (1) (b).

After Cenido indicated a desire to cooperate, the State, in April 2000, sent Cenido's attorney a Waiver of Indictment form (Waiver) for Cenido's signature and a letter referencing "Prosecution Via Complaint" (PVC). Cenido and his attorney allege that they signed the Waiver on June 8, 2000, but retained the signed Waiver until late August 2000, because Cenido wished to engage in further plea negotiations with the State. On August 31, 2000, in Cr. No. 00-01-2059, a warrant was issued for Cenido's arrest, and his incarceration for the offenses charged in Cr. No. 00-01-2059 commenced on that date.

The complaint commencing Cr. No. 00-01-2059 was filed on October 4, 2000, charging Cenido, in Counts 1 through 10, with Forgery in the Second Degree, Hawaii Revised Statutes (HRS) § 708-852; in Counts 11 through 13, Theft in the Second Degree, HRS § 707-831; in Counts 14 through 16, Forgery in the Third Degree, HRS § 708-853; and in Count 17, Fraudulent Use of Credit Card, HRS § 708-8100. On November 24, 2000, Cenido pleaded no contest to Counts 1 through 13 and 17. The statute of limitations having expired, Counts 14 through 16 were dismissed.<sup>1</sup>

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<sup>1</sup> Count 14 allegedly occurred on September 8, 1998. Count 15 allegedly occurred on September 23, 1998. Count 16 allegedly occurred on June 26, 1998.

Cenido appeared before Judge Milks on March 6, 2001, for, *inter alia*, sentencing in Cr. No. 00-01-2059.<sup>2</sup> He was represented by one counsel in Cr. No. 97-1986, and another in Cr. Nos. 99-2101 and 00-01-2059. Counsel for Cenido in Cr. Nos. 99-2101 and 00-01-2059 argued that Cenido should receive credit for time served dating back to April 2000, when Cenido first received the Waiver from the State. Cenido's counsel argued that Cenido

has been in custody this entire time. And the State or the police department chose to release him pending investigation while he sat in there and knowing full well that he wasn't going to get out for a while. And so we're just asking in the interest of justice that the Court grant him the credit for time served.

Cenido's counsel admitted that "what we're asking the Court to do may not be completely consistent with what the statutes allow for" and asked the court "to use its inherent power in the interest of justice" to grant the credit requested.

The State responded that, during the period for which he was requesting credit, Cenido was serving time not for the counts charged in Cr. No. 00-01-2059, but for other offenses. The State reminded the court that the counts charged in Cr. No. 00-1-2059 "were not active against" Cenido during the time period in question.

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<sup>2</sup> The March 6, 2001 hearing regarded 1) sentencing; 2) motion for extended term of imprisonment; 3) motion for consecutive term sentencing; 4) motion for sentencing of repeat offender in Cr. Nos. 97-1986 and 00-01-2059; and 5) motion for order requiring defendant to report to the Honolulu Police Department for identification processing.

The court sentenced Cenido to, *inter alia*, five years' imprisonment in each of the three criminal cases, granted the State's Motion for Extended Term of Imprisonment, increased each of the five-year terms to ten-year terms, and ordered all judgments to run concurrently.

Regarding credit for time served in Cr. No. 00-01-2059, the court noted that Cenido had been in custody "for a total of 153 days from the date of indictment [sic]" and then further discussed, in relevant part, as follows:

THE COURT: . . . What is the date of the letter that Mr. Cenido forwarded to the prosecutor?

[Defense Counsel]: I believe he signed it --

[Prosecutor]: Your Honor, the date he signed it is different from the date it was forwarded to [the State].

THE COURT: I'm going for the date of the signing.

[Prosecutor]: I believe it's June --

THE COURT: Upon his signature is when he was in jeopardy of the PVC.

[Prosecutor]: That would be June 8th, 2000, Your Honor.

THE COURT: All right. So he will receive credit from June 8th, 2000. And the authority cited is, as [Defense Counsel] had argued, under the Court's inherent powers. Otherwise, defendants -- they have no way to put themselves in custody other than to make the offer, as Mr. Cenido has done. So the Court will credit him.

Although the court initially stated it would credit Cenido in Cr. No. 00-01-2059 for time served dating back to June 8, 2000, the court later stated, without explanation, that "with respect to 00-1-2059, [credit] starts from August 9, 2000, to the present[,]" and the written judgment in Cr. No. 00-01-2059

reads: "CREDIT FOR TIME ALREADY SERVED GIVEN: 8/09/00 - present."

#### DISCUSSION

HRS § 706-671(1) (1993) states, in relevant part, that

[w]hen a defendant who is sentenced to imprisonment has previously been detained in any State or local correctional or other institution following the defendant's arrest for the crime for which sentence is imposed, such period of detention following the defendant's arrest shall be deducted from the minimum and maximum terms of such sentence.

In State v. Yamasaki, 91 Hawai'i 163, 164, 981 P.2d 720, 721 (App. 1999), this court concluded that HRS § 706-671(1) "does not afford a defendant the right to credit against the sentence imposed against him or her for a criminal conviction the time that the defendant spent in prison, post-arrest and pre-sentence, as a consequence of a different criminal charge and/or conviction."

In State v. March, 94 Hawai'i 250, 255, 11 P.3d 1094, 1099 (2000), the Hawai'i Supreme Court concluded that "a sentence that credits Defendant with the time served for an unrelated offense is illegal because the sentencing court is not authorized by chapter 706 to grant such a credit."

Cenido's counsel conceded that the award of credit for the time period in question was not "completely consistent with what the statutes allow for" and asked the court to grant the request using "its inherent power in the interest of justice[.]" The court cited its inherent powers, rather than HRS § 706-671,

in granting Cenido's request for time served.<sup>3</sup> Cenido argues in his opening brief that "the [trial] court properly invoked its inherent powers in the promotion of justice[, ] . . . recogniz[ing] that Cenido's only means of forcing action on the part of the State was to indicate a willingness to" prosecute via complaint. Cenido urges us to believe that he "had taken the only action he could to expedite the proceedings by first contacting the State about his willingness to 'PVC' the cases and then signing the 'PVC' paperwork on June 8, 2000."

In other words, Cenido wants the court to act as if it was a fact that he signed the Waiver and delivered it to the State on June 8, 2000. But that is not what he did or intended to do. As explained by his attorney,

at that time [of signing the Waiver], Your Honor, [Cenido] was still trying to hopefully work some sort of deal out with the State, and that's why he held off. He had signed the papers, but he had asked me to not to turn them over yet because he wanted to further explore plea negotiations with the State.

And he only made one offer with the State, which the State rejected, and . . . he finally agreed, he told me go ahead and submit the PVC papers I believe back in August of 2000.

#### CONCLUSION

Accordingly, we vacate that part of the March 6, 2001 judgment crediting Cenido for time served dating back to

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<sup>3</sup> The Hawai'i Supreme Court has cautioned that inherent powers must be "'exercised with restraint and discretion' and only in exceptional circumstances." State v. Augafa, 92 Hawai'i 454, 469, 992 P.2d 723, 738 (1995) (citing Kukui Nuts of Hawaii, Inc. v. R. Baird and Co, Inc., 6 Haw. App. 431, 438, 726 P.2d 268, 272 (1986)).

August 9, 2000, and remand for amendment of the judgment to credit Cenido for time served dating back to August 31, 2000.

DATED: Honolulu, Hawai'i, November 22, 2002.

On the briefs:

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Deputy Prosecuting Attorney,  
City and County of Honolulu,      Chief Judge  
for Plaintiff-Appellant.

Jon N. Ikenaga,  
Deputy Public Defender,      Associate Judge  
for Defendant-Appellee.

Acting Associate Judge