

NOT FOR PUBLICATION

NO. 25981

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
JO-LYNN SUEMI MISAWA, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(HPD CRIMINAL NO. 160501DL)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Watanabe, and Lim, JJ.)

Defendant-Appellant Jo-Lynn Suemi Misawa (Misawa) appeals from the May 22, 2003 Judgment and Sentence of the District Court of the First Circuit convicting her of negligent failure to control a dangerous dog, an offense prohibited by § 7-7.2 of the Revised Ordinances of Honolulu (ROH) (2003).^{1/}

ROH § 7-2.1 states:

The purpose of this article is to establish an owner's responsibility for the keeping of animals . . . on a noncommercial basis and in a manner which will not endanger or unreasonably interfere with the public health, welfare, safety, peace, or comfortable enjoyment of life and property.

ROH § 7-7.2(g) states:

The court shall hold a hearing on the alleged violation of subsection (a) within 30 days of the arrest or issuance of the citation, or as soon as practicable.

^{1/} Defendant-Appellant Jo-Lynn Suemi Misawa was sentenced to pay a \$500 fine, a \$25 fee to the Criminal Injuries Compensation Fund, and restitution in an amount to be determined by District Court Probation, and to comply with the mandatory provisions stated in Revised Ordinances of Honolulu (ROH) § 7-7.2(d) (2003) and the special provisions stated in ROH § 7-7.2(e)(2), (5), (6), and (10) (2003). The maximum sentence that could have been imposed was a fine of not more than \$2,000 and imprisonment for up to 30 days. The maximum period of probation in lieu of imprisonment that could have been imposed was six months.

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On January 28, 2003, Misawa was cited for having negligently failed to control her "dangerous" Akita dog on January 26, 2003. The citation advised Misawa that her court appearance date was February 24, 2003, twenty-seven days following the date of the citation.

On February 24, 2003, Misawa appeared with her counsel, waived reading of the charge by the State, entered a plea of not guilty and, without any objection, Judge Paula Devens scheduled the case for trial on March 31, 2003, sixty-two days after issuance of the citation.^{2/}

On March 31, 2003, Misawa appeared with her counsel, requested a continuance and, over the State's objection, Judge Devens rescheduled the case for trial on May 16, 2003.

On May 16, 2003, Misawa appeared with her counsel, requested a continuance and, over the State's objection, Judge Devens rescheduled the case for trial on May 22, 2003. Judge Devens also noted that this would be Misawa's last continuance.

On May 21, 2003, Misawa filed a Motion for Entry of Judgment of Acquittal Due to Denial of Procedural Due Process Rights. In this motion, Misawa's counsel argued that Misawa "has

^{2/} In the Defendant's Motion for Entry of Judgment of Acquittal Due to Denial of Procedural Due Process Rights filed on May 21, 2003, it is stated that, "[o]n February 24, 2003, the State moved to continue the Arraignment and Plea because it did not have possession of the Police Report and accordingly could not arraign the Defendant. Further Arraignment and Plea and Trial was scheduled for March 31, 2003 (62 days after issuance of the Citation)." This statement is contradicted by the Criminal Trial Calendar which states, in relevant part, that on "2-24-03," "DEFT & ATTY GUY MATSUNAGA PRES; WAIVED READING OF CHARGE; ENTERED NG PLEA; CONT FOR TRIAL ON 3-31-03."

been denied Procedural Due Process rights expressly conferred upon her under the ordinance she is charged with violating. Denial of such rights requires that judgment of acquittal enter in this matter."

On May 22, 2003, Judge Lono J. Lee heard and denied Misawa's motion and, after trial, found Misawa guilty, sentenced her, and denied her motion for a stay of sentence pending appeal.

Misawa filed a notice of appeal on July 18, 2003. This appeal was assigned to this court on June 3, 2004.

Prior to the current version quoted above, ROH § 7-7.2(g) required that "[t]he court shall hold a hearing on an alleged violation of subsection (a), (b), or (c) within 30 days of the arrest or citation issuance for the alleged violation or on such a date that a court shall determine." Misawa argues that,

[b]ased on the deletion of the phrase 'or on such a date that a Court shall determine,' the City Council of Honolulu withdrew any judicial discretion in the conduct of the trial. Under the terms of the Ordinance, the trial must be set in 30 days or as soon as practicable. Essentially, the Ordinance calls for trial in less than 30 days.

. . . .

. . . [T]he question is not whether the Court abused its discretion in setting the time for trial 62 days from the date the citation was issued. The question is whether or not trial was performable, feasible or possible within thirty days. Clearly, it was.

Misawa concludes that "[t]he withdrawal of express court discretion demonstrates the clear legislative intent that trial in this matter should have been held on or prior to February 27, 2003."

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We conclude that the language of ROH § 7-7.2(g) is no less than ambiguous. First, does the word "hearing" as used in ROH § 7-7.2(g) mean trial? Second, assuming the word "hearing" means trial, must the trial be completed no later than that date? Must the court enter its decision and sentence no later than that date? Third, whatever the word "hearing" means, what is the consequence of violating the requirement of ROH § 7-7.2(g)?

The City Council of Honolulu is not authorized to tell the court how and when to conduct its business. It can, if time is of the essence, specify that if the court does not take specified action by a specified date, the court may not convict the defendant of violating the ordinance for which the defendant has been cited.

We interpret the current version of ROH § 7-7.2(g) to require that a hearing (not necessarily a trial) be held:

(1) within 30 days of the arrest or issuance of a citation; or
(2) thereafter, but as soon as practicable. Here, a hearing was held within 30 days of the issuance of a citation. Consequently, the requirement of ROH § 7-7.2(g) was satisfied.

Therefore, in accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

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IT IS HEREBY ORDERED that the May 22, 2003 Judgment and Sentence from which this appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, January 4, 2005.

On the briefs:

Guy Matsunaga
for Defendant-Appellant

Chief Judge

Ryan Yeh,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee

Associate Judge

Associate Judge