

NO. 26373

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
SERENA K. AHUNA, Defendant-Appellant,
and
DONOVAN R. AGLIAM, Defendant

E.M. RIMANDO
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STATE OF HAWAII

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APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NOS. 01-1-2499 & 01-1-2703)

SUMMARY DISPOSITION ORDER

(By: Lim, Acting C.J., Foley and Nakamura, JJ.)

Defendant-Appellant Serena K. Ahuna (Ahuna) appeals from the Judgment filed on January 21, 2004 in the Circuit Court of the First Circuit (circuit court).^{1/} On September 9, 2003, a jury found Ahuna guilty of two counts (Counts III and V) of Promoting a Dangerous Drug in the Third Degree, in violation of Hawaii Revised Statutes (HRS) § 712-1243 (Supp. 2001), and one count (Count IV) of Unlawful Use of Drug Paraphernalia, in violation of HRS § 329-43.5(a) (1993). On January 21, 2004, the circuit court sentenced Ahuna to concurrent five-year terms of imprisonment for each of the three counts, with a reduced mandatory minimum of two years as a repeat offender on each of Counts 3 and 5.

On appeal, Ahuna argues that (1) the circuit court erred in excluding two three-month delays caused by police

^{1/} The Honorable Derrick H. M. Chan presided.

officer vacations where the State failed to show sufficient facts amounting to due diligence in obtaining the officers' presence and the court failed to show extraordinary circumstances for the length of delay; (2) it was unreasonable as a matter of law to exclude the continuances granted to Ahuna's co-defendant's counsel because of co-counsel's military duty; and (3) the circuit court's Conclusions of Law 6, 9, and 11 are obviously wrong because they include double counting of certain periods.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues as raised by the parties, we conclude:

(1) The circuit court did not err in excluding the two time periods caused by the police officers' vacations. Hawai'i Rules of Penal Procedure (HRPP) Rule 48(c)(4)(i); State v. Ikezawa, 75 Haw. 210, 214, 857 P.2d 593, 595 (1993); State v. Ahlo, 79 Hawai'i 385, 394, 903 P.2d 690, 699 (App. 1995); State v. Hirano, 8 Haw. 330, 337, 802 P.2d 482, 486 (App. 1990); State v. Gillis, 63 Haw. 285, 288, 626 P.2d 190, 193 (1981).

(2) The circuit court did not err in excluding the three periods of delay caused by Ahuna's co-defendant's counsel for purposes of military duty. HRPP Rule 48(c)(7); State v. Faalafua, 67 Haw. 335, 339-40, 686 P.2d 826, 829-30 (1984).

(3) The circuit court did not err in calculating the periods of delay, specifically the periods under its Conclusions of Law 6, 9 and 11. Dan v. State, 76 Hawai'i 423, 428, 879 P.2d 528, 533 (1994).

Therefore,

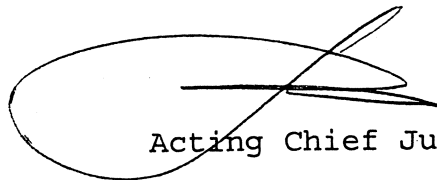
The Judgment filed on January 21, 2004 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, March 10, 2006.

On the briefs:

Mary Ann Barnard
for Defendant-Appellant.

Stephen K. Tsushima,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.



Acting Chief Judge



Associate Judge



Associate Judge