

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27272

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
DANIEL DEPARINI, Defendant-Appellant

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT,
PUNA DIVISION
(Citation Nos. 1858147MH and 1858148MH)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding Judge, Lim and Foley, JJ.)

Defendant-Appellant pro se Daniel Deparini (Deparini) appeals the Judgment filed on March 29, 2005, in the District Court of the Third Circuit, Puna Division (District Court).^{1/} The district court found Deparini guilty of No Motor Vehicle Insurance (NMVI), in violation of Hawaii Revised Statutes (HRS) § 431:10C-104 (2005 Repl.), and entered judgment for the State and against Deparini for Operation of a Vehicle Without a Certificate of Inspection, in violation of HRS § 286-25 (1993).

On appeal, Deparini advances the following points of error:

(1) [t]he "nature of the MV [motor vehicle] NFI [no no-fault insurance] law based on material security and imposing vicarious financial liability on the mv drivers in conjunction with the MV SIC [safety inspection certificate] providing assurance of mv operational safety, these laws does [sic] not

^{1/} The Honorable Barbara T. Takase presided.

guarantee an essential or substantial protection to the public health and safety in regards to traffic safety";

(2) "[t]he Statutory purpose of the NFI HRS § 431:10C-102, Criteria (b)(1), permisable [sic] Orders of the State, for State Action of HRS § 431:10C-104(a);(b)(1), is an arbitrary discrimination Against [Deparini], the disfavored class of mv drivers separated from mv drivers receiving state public assistance by Section HRS § 431:10C-407(b)(2), granting NFI benefits only to those on public assistance";

(3) "[t]he Prosecutor for the state pointed out evidence of mv sic ordinance selective enforcement of the NFI law; the sic purposeful delay to compel [Deparini] to get a valid NFI" in violation of Deparini's rights under the Fifth Amendment to the United States Constitution;

(4) the "selective enforcement of the NFI and SIC laws denies" him his "right to a determination of probable cause";

(5) the penalties imposed by the court after ruling against Deparini are disproportionate;

(6) he cannot pay the fines because of his indigence and is unable, as a physically disabled person, to perform community service in lieu of paying the fines;

(7) NFI and SIC laws stripped him "of his rights to contract; infringed on his privileges, immunities, life, liberty and property" and "endangered [Deparini's] health and welfare by permitting arbitrary, and economic discriminatory conduct of

State -- Action resulting in [Deparini's] indigency [sic], and emotional distress for an unjust State purpose"; and

(8) "[n]otwithstanding the 'ORDERS OF STATE' on state courts, the courts had a duty to provide [Deparini] due process rights to Probable Cause Determination base [sic] on proximate causation."

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 raised by the parties, we resolve Deparini's points of error as follows:

(1) Many of Deparini's points of error do not contain the necessary citations to the record or are not argued with sufficient particularity and are thus deemed waived. Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b). This court may affirm a judgment of a district court based entirely on an appellant's failure to comport with the applicable court rules. O'Connor v. Diocese of Honolulu, 77 Hawai'i 383, 385, 885 P.2d 361, 363 (1994). Nonetheless, this court's policies are "to permit litigants to appeal and to have their cases heard on the merits, where possible." Id. at 386, 885 P.2d at 364. This court, pursuant to HRAP 2, is empowered to address any issues raised by appellants and will address the constitutional issues Deparini does raise and argue with some degree of clarity.

(2) Deparini fails to carry his burden of demonstrating that the Hawai'i NMVI statute violates his right to equal protection under the Hawai'i and United States

Constitutions. The NMVI statute is rationally related to the legitimate state interest of protecting the health, safety and welfare of Hawai'i's citizens and also furthers that legitimate state interest. Del Rio v. Crake, 87 Hawai'i 297, 305-06, 955 P.2d 90, 98-99 (1998). The NMVI statute does not deny equal protection to those who lacked NMVI coverage because "(1) driving is a privilege, not a right; (2) disincentives designed to encourage participation [in the NMVI system] are rationally related to the legitimate purposes of creating a system of reparations for accidental harm and loss arising from motor vehicle accidents and to compensate these damages without regard to fault[] and to limit tort liability; and (3) persons who are truly indigent can seek coverage through public assistance provisions." Id. at 306-07, 955 P.2d at 99-100 (internal quotation marks, citation, ellipsis, and brackets in original omitted). "Under Hawai'i's comprehensive scheme, there is no legitimate excuse for driving without insurance coverage." Id. at 306, 955 P.2d at 99.

(3) Deparini also fails to sustain his challenge to the validity of the Hawai'i statutes requiring motor vehicle safety checks. Hawai'i case law clearly establishes that the state may validly regulate the conduct and operation of motor vehicles pursuant to its police power and imposing a requirement that vehicles bear valid safety inspection emblems is rationally related to furthering that purpose. State v. French, 77 Hawai'i 222, 231-32, 883 P.2d 644, 653-54 (App. 1994).

(4) Deparini fails to demonstrate that charges of failure to obtain a certificate of inspection and failure to obtain motor vehicle insurance constituted an ongoing, single offense for which he had already been prosecuted in prior actions and, therefore, the charges brought in this case violated his rights against being placed in double jeopardy.

The Fifth Amendment of the United States Constitution provides that no person shall "be subject for the same offence [sic] to be twice put in jeopardy of life or limb." The due process clause of the Fourteenth Amendment makes the double jeopardy prohibition applicable to the individual states. Benton v. Maryland, 395 U.S. 784, 794, 89 S. Ct. 2056, 2062 (1969). Article I, §10 of the Hawaii Constitution also provides that no person shall "be subject for the same offense to be twice put in jeopardy."

The Fifth Amendment protects against a second prosecution for the same offense after acquittal, a second prosecution for the same offense after conviction, and multiple punishments for the same offense. North Carolina v. Pearce, 395 U.S. 711, 717, 89 S. Ct. 2072, 2076 (1969); State v. Lessary, 75 Haw. 446, 454, 865 P.2d 150, 154 (1994). "'Successive prosecution' cases occur when the defendant is prosecuted for an offense, then is prosecuted a second time for the same offense after acquittal or conviction. State v. Feliciano, 107 Hawai'i 469, 476, 115 P.3d 648, 655 (2005). In such cases, this court applies the "same conduct" test as set forth in Grady v. Corbin,

495 U.S. 508, 110 S. Ct. 2084 (1990): "the Double Jeopardy Clause bars any subsequent prosecution in which the government, to establish an essential element of an offense charged in that prosecution, will prove conduct that constitutes an offense for which the defendant has already been prosecuted." Lessary, 75 Haw. at 457-58, 865 P.2d at 155 (quoting Grady, 495 U.S. at 521, 110 S. Ct. at 2093).

Deparini alleges that he has been previously prosecuted for failure to have a valid certificate of inspection and failure to obtain motor vehicle insurance, yet no evidence of such prior convictions was introduced in the district court and no evidence of such convictions appears in the record on appeal. Even if, *arguendo*, such evidence appeared in the record, it would not establish the existence of a single ongoing violation as opposed to a series of repeating violations, or buttress Deparini's claim in any other way. HRS § 286-25 (the SIC statute) provides that "[w]hoever operates . . . any vehicle on a public highway without a current official certificate of inspection, issued under section 286-26, shall be fined not more than \$100." A complementary statute, HRS § 286-23 (1993) ("Responsibility for compliance"), states that "[e]very owner or driver, upon receiving a citation [for a missing certificate of inspection], shall comply therewith and shall within five days secure an official certificate of inspection . . . or the driver may request a hearing." HRS § 286-23(a) (1993). Subsection (b) of § 286-23 provides that "[n]o person shall operate any vehicle

after receiving a citation," except under certain circumstances not applicable here. HRS § 431:10C-104(a) provides that "no person shall operate or use a motor vehicle upon any public street, road, or highway of this State at any time unless such motor vehicle is insured at all times under a motor vehicle insurance policy." Subsection (c) of the this statute states that "[a]ny person who violates the provisions of this section shall be subject to the provisions of section 431:10C-117(a) [(2005 Repl.) (Penalties)]." Subsection (a)(2)(A) of § 431:10C-117(a) provides that "[e]ach violation shall be deemed a separate offense and shall be subject to a fine of not less than \$100 nor more than \$5,000 which shall not be suspended except as provided [elsewhere]."

(5) Deparini also fails to demonstrate that the two offenses are so similar that they constitute a single offense. Feliciano, 107 Hawai'i at 477, 115 P.3d at 656. Although, pursuant to HRS § 286-26(i) (Supp. 2005), obtaining valid motor vehicle insurance coverage is a prerequisite to obtaining a valid certificate of inspection, HRS § 286-26 also sets forth the various other criteria necessary to obtain a valid certificate, including that all vehicles be subject to a comprehensive mechanical safety inspection. HRS § 286-26(e) (Supp. 2005). Moreover, the offense in this case, as set forth in the statute, is the failure to obtain the certificate of inspection, not simply the failure to obtain motor vehicle insurance benefits. The offense itself requires no proof of lack of insurance. HRS

§ 431.10C-104, the NMVI statute, merely specifies that the vehicle operator possess valid insurance while operating the vehicle. It is possible to violate each statute independently without violating the other. The offenses are distinct and separate.

Therefore,

IT IS HEREBY ORDERED that the March 29, 2005 Judgment setting forth Deparini's guilty conviction for No Motor Vehicle Insurance and the judgment for the State and against Deparini for Operation of a Vehicle Without a Certificate of Inspection, in the District Court of the Third Circuit, Puna Division, are affirmed.

DATED: Honolulu, Hawai'i, November 6, 2006.

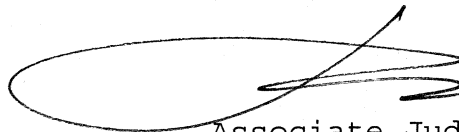
On the briefs:

Daniel Deparini,
Defendant-Appellant pro se.

Glenn H. Shiigi,
Deputy Prosecuting Attorney,
County of Hawai'i,
for Plaintiff-Appellee.



Presiding Judge



Associate Judge



Associate Judge