

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27011

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
LOUIS DALE CAMBRA, JR., Defendant-AppellantAPPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CR. NO. 02-1-0347(1))KHAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2007 MAY 10 AM 9:31

FILED

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Watanabe and Foley, JJ.)

Defendant-Appellant Louis Dale Cambra, Jr. (Cambra) appeals from the Judgment filed November 17, 2004 in the Circuit Court of the Second Circuit^{1/} (circuit court).

Cambra pleaded no contest to Promoting a Dangerous Drug in the Third Degree, pursuant to Hawaii Revised Statutes (HRS) § 712-1243(1) (1993 & Supp. 2001) (Count One); Prohibited Acts Related to Drug Paraphernalia, pursuant to HRS § 329-43.5(a) (1993) (Count Two); Promoting a Harmful Drug in the Fourth Degree, pursuant to HRS § 712-1246.5(1) (1993) (Count Three); and Carrying a Deadly Weapon, pursuant to HRS § 134-51(a) (1993 & Supp. 2006) (Count Five).

On appeal, Cambra argues that the circuit court "erred in concluding that the return and certified copies of the search warrants were filed promptly and were in substantial compliance

^{1/} The Honorable Joel E. August presided.

with [Hawai'i Rules of Penal Procedure (HRPP)] Rule 41 and that no intentional violation of HRPP Rule 41 occurred." Cambra argues that the circuit court's Finding of Fact (FOF) 12 ("Shortly after May 31, 2002, Officer Hunt, who was the primary Officer in the case, suffered a debilitating illness that resulted in hospitalization") was clearly erroneous. Cambra also challenges the circuit court's Conclusions of Law (COL) 2 (the search warrant returns were filed promptly and were in accordance with HRPP Rule 41), 5 (no intentional violation of HRPP 41 occurred), and 8 (the inventory was submitted in compliance with the law and Cambra has shown no prejudice).

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 hold the circuit court did not reversibly err by concluding that the late filing of the return did not violate HRPP Rule 41.

The circuit court did not err in COL 8 when it found that Cambra demonstrated no undue prejudice. Cambra fails to demonstrate, or even assert, any undue prejudice resulting from the delay. State v. Stachler, 58 Haw. 412, 422-23, 570 P.2d 1323, 1330 (1977) (where a defendant has failed to show that a violation of HRPP Rule 41(d) has resulted in prejudice to the defendant's rights, a suppression remedy is not appropriate).

In the context of Officer Hunt's illness and absence from work, we cannot conclude that a delay of three months in the filing of the return renders the warrant defective for purposes of Rule 41(d). There is no evidence that Hunt engaged in any deliberate delay, and, once able to work, he diligently filed the return with the court. The circuit court's COL 2 was not clearly erroneous.

Cambra failed to show that the untimely filing of the return amounted to an "'intentional and deliberate disregard' of the Rule 41(d) filing requirements where the police department is aware that the officer who is supposed to file the return will be unavailable for a lengthy period of time." Cambra directs this court to no evidence in the record establishing such an intentional and deliberate disregard for the provisions of HRPP Rule 41(d).

The circuit court did not err when it found in its FOF 12 that Officer Hunt suffered an illness preventing him from promptly filing the returns. Officer Hunt testified that shortly after he executed the warrant, he suffered an illness that prevented him from working for several months. Officer Hunt never testified that he was hospitalized, and thus the circuit court clearly erred to the extent that the challenged FOF refers to hospitalization. Nonetheless, the record adequately supports the remainder of the finding: that Officer Hunt suffered a

debilitating illness. The central issue was whether Officer Hunt was debilitated from working, which delayed his filing of the return on the warrant until August.

Therefore,

The Judgment entered by the Circuit Court of the Second Circuit on November 17, 2004 is hereby affirmed.

DATED: Honolulu, Hawai'i, May 10, 2007.

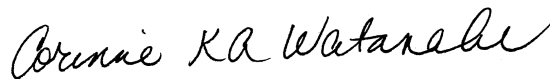
On the briefs:

Joyce K. Matsumori-Hoshijo
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Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellee.



Chief Judge



Associate Judge



Associate Judge