

NO. 27989

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
CHRISTOPHER PAUL MCAFEE, Defendant-Appellant

EM. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT,
KANEHOE DIVISION
(HPD Traffic Nos. 5685903MO & 5685904MO)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Christopher Paul McAfee ("McAfee") appeals from the Order Denying Defendant's Motion to Reconsider Sentence filed on May 19, 2006 in the District Court of the First Circuit, Kaneohe Division ("district court").^{1/} The district court had dismissed two underlying traffic offenses, but assessed costs of \$50 each for two bench warrants for McAfee that the court had issued during the course of the litigation. On appeal, McAfee raises the following two points of error:

(1) "The doctrine of res judicata barred the district court from assessing the bench warrant costs against McAfee where both bench warrants had previously been recalled."

(2) "The imposition of the bench warrant costs against McAfee violated his constitutional due process [sic] where the district court failed to advise him of his rights and failed to hold a properly constituted hearing on the matter."

^{1/} Per diem District Court Judge Clyde E. Sumida presided.

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 McAfee's points of error as follows:

(1) McAfee's res judicata argument fails because no prior judgment had been entered as to the warrant costs. Res judicata provides that "the judgment of a court of competent jurisdiction is a bar to a new action in any court between the same parties or their privies concerning the same subject matter, and precludes the relitigation, not only of the issues which were actually litigated in the first action, but also of all grounds of claim and defense which might have been properly litigated in the first action but were not litigated or decided." Marsland v. Int'l Soc. for Krishna Consciousness, 66 Haw. 119, 124, 657 P.2d 1035, 1038-39 (1983) (brackets omitted) (quoting Ellis v. Crockett, 51 Haw. 45, 55, 451 P.2d 814, 822 (1969)). McAfee essentially argues that the cost of the bench warrants should have been assessed, if at all, by the district court at some time prior to their recall on July 6, 2005 and October 25, 2005, respectively.

Hawaii Revised Statutes § 607-8.5 (Supp. 2006) provides that "[t]he court, when issuing a bench warrant for any person who fails to appear or who otherwise fails to comply with a court order, may assess that person a sum not to exceed \$50 for the cost of issuing the bench warrant." We see no support for McAfee's position in that statutory language.

(2) The district court did not violate McAfee's right to due process under the United States and Hawai'i Constitutions by assessing the bench warrant costs without giving him notice, a hearing, or an opportunity to be heard. As McAfee notes, HRS § 607-8.5 gives the district court the power to assess bench warrant costs, but prescribes no specific process for doing so.

Article I, § 5 of the Hawai'i Constitution provides in relevant part that "[n]o person shall be deprived of life, liberty or property without due process of law[.]" The Hawai'i Supreme Court has stated that "[a]t its core, procedural due process of law requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant liberty interest." State v. Bani, 97 Hawai'i 285, 293, 36 P.3d 1255, 1263 (2001). The standard is a flexible one. State v. Adam, 97 Hawai'i 475, 482, 40 P.3d 877, 884 (2002). Analyzing claims under procedural due process requires a two-step inquiry: first, whether the state has deprived the defendant of a property or liberty interest, and second, what specific procedures are required to satisfy due process. Bani, 97 Hawai'i at 293, 36 P.3d at 1263.

Accepting, arguendo, that \$100 in warrant costs is a sufficient property interest to implicate the due process clause, we next inquire into the nature of the procedures provided. In this case, McAfee objected to the warrant costs when initially imposed and further objected and explained his position at the district court's hearing on his motion for reconsideration. McAfee's assertions that he lacked a meaningful opportunity to address the matter of the warrant costs are simply not borne out by the record.

(3) The district court did not abuse its discretion by requiring McAfee to pay \$50 for each bench warrant (the maximum amount allowed by statute). Based on McAfee's repeated failure to appear for hearings, we cannot say that the district court's actions in this case "clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant." Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 114, 839 P.2d 10, 26 (1992).

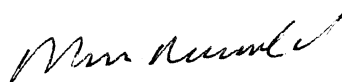
Therefore,

The Order Denying Defendant's Motion to Reconsider Sentence filed on May 19, 2006 in the District Court of the First Circuit, Kaneohe Division, is affirmed.

DATED: Honolulu, Hawai'i, October 18, 2007.

On the briefs:

Jon N. Ikenaga,
Deputy Public Defender,
for Defendant-Appellant.



Chief Judge

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



Associate Judge



Associate Judge