

*** NOT FOR PUBLICATION ***

NO. 22692

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

IESE K. Tanielu, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE SECOND CIRCUIT
(FC-CR. NO. 93-0398)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Acoba, JJ.
and Circuit Judge Blondin, assigned by reason of vacancy)

Defendant-appellant Iese K. Tanielu appeals from the June 30, 1999 post judgment order of the family court of the second circuit, the Honorable Douglas S. McNish presiding, granting the State of Hawai'i's motion to execute Tanielu's sentence for his conviction of abuse of a family or household member, in violation of Hawai'i Revised Statutes (HRS) § 709-906 (1993).¹ On appeal, Tanielu argues that the family court erred by granting: (1) the motion for reconsideration, or in the alternative, motion to correct illegal sentence, as it was untimely; and (2) the motion to execute sentence, as the unreasonable delay in executing his sentence resulted in substantial prejudice.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold that the family court did not err by granting either motion, as: (1) the motion for reconsideration, or in the alternative, motion to correct illegal sentence, was not untimely, inasmuch as Hawai'i

¹ HRS § 709-906 provides in relevant part that "[i]t shall be unlawful for any person, singly or in concert, to physically abuse a family or household member[.]"

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Rules of Penal Procedure (HRPP) Rule 35² permits a court to correct an illegal sentence "at any time"; and (2) there was substantial evidence of sufficient quality and probative value to support the family court's finding that Tanielu did not suffer substantial prejudice as a result of the unreasonable delay in executing sentence. Therefore,

IT IS HEREBY ORDERED that the judgment and sentence from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, June 26, 2003.

On the briefs:

Linda C.R. Jameson,
Deputy Public Defender,
for defendant-appellant

Simone C. Polak,
Deputy Prosecuting Attorney,
for plaintiff-appellee

² HRPP Rule 35 provides in relevant part:

The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence. The court may reduce a sentence within 90 days after the sentence is imposed, or within 90 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal[.]