***** FOR PUBLICATION *****

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

--- o0o ---

IN THE INTEREST OF JOHN DOE, Born on January 25, 1985,
Petitioner-Appellant.
(NO. 24036 (FC-J NO. 0041144))

IN THE INTEREST OF JOHN DOE, Born on January 28, 1983,
Petitioner-Appellant.
(NO. 24042 (FC-J NO. 0035567))

NOS. 24036 AND 24042

APPEAL FROM THE FIRST CIRCUIT FAMILY COURT

JULY 11, 2003W

MOON, C.J., LEVINSON AND NAKAYAMA, JJ., AND
CIRCUIT JUDGE KOCHI, ASSIGNED BY REASON OF VACANCY,
WITH ACOBA, J., DISSENTING

OPINION OF THE COURT BY LEVINSON, J.

The petitioners-appellants John Doe, born January 25, 1985 [hereinafter, “Minor 1”], in No. 24036, and John Doe, born on January 28, 1983 [hereinafter, “Minor 2”], in No. 24042 [hereinafter, collectively, “the Minors”], appeal from the orders of the Family Court of the First Circuit, the Honorable Frances Q.F. Wong presiding, denying their petitions for writs of habeas corpus, filed on January 12, 2001, in which they challenged their detention by the family court. The Minors argue that the family court erred in denying their petitions because, during their initial detention hearings in the family court, the Honorable William J. Nagle, III, presiding, “there was no factual basis for

a probable cause determination to justify continued detention[;]" accordingly, the Minors pray that this court "find that the family court erred in denying their petitions for writs of habeas corpus based on the failure of the court at the initial hearing to make a determination of probable cause for continued detention beyond twenty-four hours."[1]

For the reasons discussed infra in section II, we hold that the Minors' consolidated appeals are moot.

I. BACKGROUND

On December 6, 2000, the prosecution filed petitions alleging that the Minors came within the purview of HRS § 571-11(1) (1993),[2] on the basis that they allegedly committed or attempted to commit the offense of assault in the third degree, in violation of HRS § 707-712(1)(a) (1993). The same day, the Minors entered denials of the prosecution's charges and the family court, the Honorable William J. Nagle, III, presiding, found that there were sufficient facts to require continued detention of the Minors until their trials on December 12, 2000.

The next day, December 7, 2000, both minors filed petitions for a writ of habeas corpus, pursuant, inter alia, to

---

[1] The Minors, however, seek to disturb neither the family court's adjudication of Minor 1 as a law violator within the purview of HRS § 571-11(1) in No. 24036 nor the family court's dismissal with prejudice of the petition regarding Minor 2 in No. 24042.

[2] HRS § 571-11 provides in relevant part:

> Except as otherwise provided in this chapter, the [family] court shall have exclusive original jurisdiction in proceedings:
>
> (1) [c]oncerning any person who is alleged to have committed an act prior to achieving eighteen years of age which would constitute a violation or attempted violation of any federal, state, or local law or municipal ordinance. . . .

HRS § 660-3 (1993),[3] in which they argued that they were being held illegally because the family court had not been presented with any evidence upon which it could base its finding that probable cause existed to detain them. In the affidavit that the Minors' counsel filed with each of their petitions, counsel attested that, although Judge Nagle had found that "probable cause existed to detain the [M]inor[s] until trial[,]" "no evidence of any kind was presented to Judge Nagle to support the finding of probable cause[.]"

The family court conducted a consolidated hearing on the petitions on December 11, 2000. The prosecution argued that, because Minor 1 had not objected "when Judge Nagle did find probable cause . . . to hold the minor," he had waived his right to challenge the family court's determination of probable cause or had impliedly "agreed that there was probable cause to hold him at that point." In addition, the prosecution suggested that the family court could "cure" any alleged error in Judge Nagle's determination by reviewing the police reports regarding the Minors and making a new determination of probable cause. Counsel for the Minors contended that, pursuant to Gerstein v. Pugh, 420 U.S. 103 (1975), the family court was required to base its determination on facts and circumstances submitted to the court, not just a complaint, regardless of whether the minor requested it or not, and that the error could not be cured.

The family court subsequently reviewed the police reports regarding each minor's case and found that probable cause existed to believe that the Minors fell within the purview of HRS

[3] HRS § 660-3 provides in relevant part that the family court "may issue writs of habeas corpus in cases in which persons are unlawfully restrained of their liberty . . . by order of the family court or under chapter 334 . . . ."

§ 571-11, see supra note 1.[4] Accordingly, the circuit court orally ruled as follows:

> Insofar as the writ of habeas corpus points to . . . lack of legal foundation for the probable cause decisions which were made at the time of detention, that's cured. And I do not find that -- that an appropriate remedy would be therefore to release the kids.
>
> Insofar as the writ challenges family court's . . . basic authority to deal with these kids, I had already ruled on that, that regardless of the new charges and any defects that -- that might have occurred with the two charges, that notwithstanding that[,] that given the [probation] status of each kid, each of these two juveniles, that the Court did have independent authority in any case to hold them.

In addition, the family court ruled that Hawai'i Rules of Penal Procedure (HRPP) Rule 5 (2001),[5] which the Minors urged the family court to consider, was inapplicable to family court proceedings. Consequently, the family court denied the Minors' petitions.

On December 12, 2000, the family court filed a decree regarding the prosecution's petition concerning Minor 1's law violation, in which it found that "the material allegations of [Minor 1's] petition have been proved beyond a reasonable doubt and that [Minor 1] is a law violator within the purview of HRS [§] 571-11(1)." The family court's decree noted, however, that the charge against Minor 1 had been "[a]mended to [a]ffray,"

---

[4] Thus, the family court essentially treated the Minors' habeas petitions as motions for reconsideration of its initial probable cause determination, required as a prerequisite to appealing an order of the family court pursuant to HRS § 571-54 (1993), as construed by the Intermediate Court of Appeals in In re Doe, 3 Haw. App. 391, 394, 651 P.2d 492, 494 (1982).

[5] HRPP Rule 5 provides in relevant part:

> As soon as practicable, and, Rule 45 notwithstanding, not later than 48 hours after the warrantless arrest of a person held in custody, a district judge shall determine whether there was probable cause for the arrest. No judicial determination of probable cause shall be made unless there is before the judge, at the minimum, an affidavit of the arresting officer or other person making the arrest, setting forth the specific facts to find probable cause to believe that an offense has been committed and that the arrested person has committed it.

pursuant to HRS § 707-712(2). The family court transferred further disposition of Minor 1's case to the third circuit court. As for Minor 2, the family court dismissed the prosecution's petition with prejudice.

On January 12, 2001, the family court entered its written orders denying the Minors' petitions for writs of habeas corpus; on January 17, 2001, the Minors filed notices of appeal from the family court's January 12, 2001 written orders. The Minors' appeals were subsequently consolidated.

II. DISCUSSION

It is well settled in Hawai‘i that

> [a] case is moot where the question to be determined is abstract and does not rest on existing facts or rights. Thus, the mootness doctrine is properly invoked where "events . . . have so affected the relations between the parties that the two conditions for justiciability relevant on appeal -- adverse interest and effective remedy -- have been compromised."

Okada Trucking Co., Ltd. v. Board of Water Supply, 99 Hawai‘i 191, 195-96, 53 P.3d 799, 803-04 (2002) (quoting CARL Corp. v. State, Dep't of Educ., 93 Hawai‘i 155, 164, 997 P.2d 567, 576 (2000) (quoting In re Application of Thomas, 73 Haw. 223, 226, 832 P.2d 253, 254 (1992) (quoting Wong v. Board of Regents, University of Hawai‘i, 62 Haw. 391, 394, 616 P.2d 201, 203-04 (1980)))). The Minors urge this court to hold that the family court erred in denying their habeas petitions, but we are unable to discern any adverse interest or effective remedy in the present matter at this time, inasmuch as the family court has adjudged Minor 1 to be a law violator within the purview of HRS § 571-11(1) and has dismissed the petition regarding Minor 2 with prejudice. Although the Hawai‘i appellate courts have never specifically addressed the question, it is widely acknowledged in other jurisdictions that, absent unusual circumstances, any

defects in a pretrial determination of probable cause are rendered moot, or are without any effective remedy, which is much the same thing,[6] by a subsequent conviction, see Blue v. United States, 342 F.2d 894, 901 (D.C. Cir. 1965) (rejecting a juvenile's challenge to pretrial detention in light of the subsequent trial in which he was adjudged guilty of the charges); People v. Alexander, 663 P.2d 1024, 1025 n.2 (Colo. 1983) ("Absent unusual circumstances . . . [,] any issue as to the presence of probable cause is rendered moot by the jury's guilty verdict."); State v. Mitchell, 660 P.2d 1336, 1343 (Idaho 1983) (holding that a magistrate's reliance upon inadmissible evidence to establish probable cause "is not a ground for vacating a conviction where the appellant received a fair trial and was convicted, and there is sufficient evidence to sustain the conviction"); State v. West, 388 N.W.2d 823, 829 (Neb. 1986) (noting that "any error . . . in ruling on a plea in abatement is cured by a subsequent finding by the jury of guilt beyond a reasonable doubt"); Commonwealth v. McCullough, 461 A.2d 1229, 1231 (Pa. 1983) (holding that an error in appellant's preliminary hearing is "immaterial where at the trial the Commonwealth met its burden of proving the underlying felony beyond a reasonable doubt"), or a dismissal of the charges, see Bell v. Dillard Dept. Stores, Inc., 85 F.3d 1451, 1456 (10th Cir. 1996) (noting that, "[a]fter the dismissal of the charges at trial, an appeal of the

---

[6] Justice Acoba seems to believe that the lack of an effective remedy weighs against rather than in favor of a finding of mootness. See Dissenting Opinion at 18 ("the cases cited by the majority[,]" in support of the proposition that defects in a pretrial determination of probable cause are rendered moot by a subsequent conviction or dismissal, "support an opposing conclusion, namely, that the court's maintain jurisdiction, but the remedy for a defective probable cause hearing may not require the reversal of a valid conviction or release" (some emphasis added and some in original)). But Justice Acoba fails to cite any authority in support of his belief and, as noted supra, it is well settled in Hawai'i that the absence of "adverse interest and effective remedy" renders an appeal moot. See Okada Trucking Co., Ltd., 99 Hawai'i at 195-96, 53 P.3d at 803-04 (citations omitted).

probable cause determination would be subject to dismissal as moot"); see also Spriggs v. Wilson, 467 F.2d 382, 384-85 (D.C. Cir. 1972) (holding that an appeal challenging pretrial police line-up procedures was moot because the "appellant was acquitted of all charges that were not dismissed by the Government"). We agree.[7]

The Minors do not deny that their cases are moot,[8] nor do they contend that the family court's alleged error prejudiced them in any way;[9] instead, they claim that this court should review their cases on the basis that the matters presented are "of substantial public concern and capable of repetition, yet evading review," and, consequently, represent an exception to the mootness doctrine. We disagree.

---

[7] We are unable to discern why, as Justice Acoba suggests in his dissent, see Dissenting Opinion at 20-22, the foregoing holding would preclude claims for relief brought pursuant to 42 U.S.C. § 1983 or the suppression of evidence obtained as the result of an unlawful detention. Indeed, Bell, 85 F.3d at 1456, cited supra, expressly notes that civil rights claims are not precluded simply because the plaintiff's "acquittal in the prior criminal case deprive[s] [him or her] of the opportunity to appeal" the probable cause issue. (Discussing Dixon v. Richer, 922 F.2d 1456, 1459 (10th Cir. 1991).) Nevertheless, we believe that it is prudent to leave such questions for an appeal in which the parties raise them. The parties in the present matter neither advance civil rights claims nor seek to overturn Minor 1's adjudication as a law violator on the basis that the family court erroneously admitted evidence obtained from an unlawful detention. Rather, the Minors' appeals arise from the prosecution's charges of criminal misconduct. See supra note 4.

[8] Nor do they seek any remedy other than this court's pronouncement that the family court erred.

[9] Indeed, we are unable to discern how the alleged delay in a proper finding of probable cause might have prejudiced the Minors, inasmuch as Minor 1 was adjudicated a law violator and the family court dismissed the petition concerning Minor 2 with prejudice on December 12, 2000, the day on which Judge Nagle originally scheduled their trials. We note in this regard that even "constitutional error[s may be] harmless so long as 'the court . . . [is] able to declare a belief that it was harmless beyond a reasonable doubt.'" Korean Buddhist Dae Won Sa Temple v. Sullivan, 87 Hawai'i 217, 245, 953 P.2d 1315, 1343 (1998) (quoting Chapman v. California, 386 U.S. 18, 24 (1966)) (some brackets added and some in original) (ellipses in original). "Recognizing as much, this court applies the harmless error doctrine to errors that occur in the trial process, including those that implicate an accused's constitutional rights." State v. Aplaca, 96 Hawai'i 17, 25, 25 P.3d 792, 800 (2002) (citing State v. Ford, 84 Hawai'i 65, 74, 929 P.2d 78, 87 (1996)).

This court has "recognized an exception to the mootness doctrine in cases involving questions that affect the public interest and are capable of repetition yet evading review." Okada Trucking Co., 99 Hawai'i at 196, 53 P.3d at 804 (citations and internal quotation signals omitted). "Among the criteria considered in determining the existence of the requisite degree of public interest are the public or private nature of the question presented, the desirability of an authoritative determination for the future guidance of public officers, and the likelihood of future recurrence of the question." Id. at 196-97, 53 P.3d at 804-05 (quoting Johnston v. Ing, 50 Haw. 379, 381, 441 P.2d 138, 140 (quoting In re Brooks' Estate, 205 N.E.2d 435, 437-438 (Ill. 1965))) (internal quotation signals omitted).

The Minors argue that the issues raised in their appeal are of substantial public concern on the basis that they "involve the due process rights of minors pertaining to detainment and detention."[10] But the Minors do not challenge the preliminary detention procedures prescribed by HRS § 571-32(e) (1993);[11] they merely contend that there were insufficient facts and

---

[10] Although the Minors contend that the present matter involves the "due process" rights of minors, they, in fact, premised their constitutional challenges upon the fourth amendment to the United States Constitution and Article I, section 7 of the Hawai'i Constitution, which protect citizens against, inter alia, unreasonable searches and seizures.

[11] HRS § 571-32(e) provides in relevant part:

> No child may be held after the filing of a petition or motion . . . unless an order for continued detention or shelter has been made by a judge after a court hearing. If there is probable cause to believe that the child comes within section 571-11(1)[, see infra note 1], the child may be securely detained, following a court hearing, in a detention facility for juveniles or may be held in a shelter. . . .

Inasmuch as the Minors do not challenge the constitutionality of HRS § 571-32(e), Justice Acoba's speculation regarding the statute's constitutionality, see Dissenting Opinion at 16-17, while interesting, is inapposite in the present matter.

circumstances to support Judge Nagle's determinations of probable cause in their particular cases.[12]

But assuming arguendo that Judge Nagle erred in making a probable cause determination in the absence of any evidence,[13]

---

[12] Although the Minors pray in the conclusion of their opening brief that this court "find that the family court erred in denying their petitions for writs of habeas corpus based on the failure of the court at the initial hearing to make a determination of probable cause for continued detention beyond twenty-four hours[,]" their point of error on appeal is, in fact, that "there was no factual basis for a probable cause determination to justify continued detention" and not that Judge Nagle failed to make any probable cause determination at all. Indeed, as noted supra in section I, in the affidavits that the Minors filed with their habeas petitions, their counsel admitted that Judge Nagle did "find that probable cause existed to detain the [M]inor[s] until trial" and merely alleged that "no evidence of any kind was presented to Judge Nagle to support the finding of probable cause."

Thus, Justice Acoba's entire constitutional analysis, See Dissenting Opinion at 5-17, which relies upon case law involving detainees who were not, or claimed they were not, afforded a prompt judicial determination of probable cause, see, e.g., County of Riverside v. McLaughlin, 500 U.S. 44 (1991); Gerstein v. Pugh, 420 U.S. 103 (1975); Blumel v. Mylander, 954 F. Supp. 1547, 1559 (M.D. Fla. 1997); Alfredo A. v. Superior Court of Los Angeles County, 865 P.2d 56 (Cal. 1994); Black v. State, 871 P.2d 35 (Okla. Crim. App. 1994), rather than detentions based on a defective determination of probable cause, is inapposite to the present matter.

[13] Because there is no transcript in the record on appeal of the proceeding conducted before Judge Nagle on December 6, 2000, and Judge Nagle did not expressly recite the facts "sufficient . . . to require continued detention," it is impossible for us to determine whether there is any merit to the Minors' contention that "no evidence of any kind was presented to [the family court] to support the finding of probable cause." We note that it is the appellant's responsibility to include a transcript of any proceedings relevant to his or her points of error on appeal. See Hawai'i Rules of Appellate Procedure (HRAP) Rule 10(b)(1)(A) ("When an appellant desires to raise any point on appeal that requires consideration of the oral proceedings before the court . . . appealed from, the appellant shall file with the clerk of the court appealed from . . . a request or requests to prepare a reporter's transcript of such parts of the proceedings as the appellant deems necessary. . . ."); Bettencourt v. Bettencourt, 80 Hawai'i 225, 230-31, 909 P.2d 553, 558-59 (1995) (disregarding arguments raised on appeal that required a review of the proceedings below because the appellant failed to include a transcript of the proceedings in the record); Tradewinds Hotel, Inc. v. Cochran, 8 Haw. App. 256, 266, 799 P.2d 60, 66 (1990) (same). Justice Acoba infers from the deputy prosecuting attorney's (DPA) comments during the habeas corpus hearings that the Minors' allegation that no evidence was introduced at the December 6, 2000 probable cause hearings is correct, see Dissenting Opinion at 1-2, 12 ("not once did the prosecution indicate that evidence establishing probable cause had been introduced at the December 6 hearing"). It is true that the DPA did not expressly dispute the Minors' evidentiary claim, but the DPA was "at somewhat of a disadvantage," as he explained to the court, "since [he] was[not] . . . present at the [December 6, 2000] hearing." Nevertheless, he informed the court that the DPA who had attended the December 6, 2000 hearing had advised him that the Minors had not objected to the probable cause determination, although the deputy public defender (DPD) had advised him that he had objected in Minor 2's case. Consequently, the DPA

(continued...)

the same was subsequently cured by Judge Wong, who reviewed the police reports concerning the Minors and determined that there was probable cause to detain them. Notably, the Minors do not argue that Judge Wong lacked sufficient facts and circumstances upon which to base her probable cause determinations. Thus, assuming arguendo that Judge Nagle erred in the present matter, there is no need for "an authoritative determination for the future guidance of public officers," inasmuch as the family court is clearly aware of its responsibilities regarding determinations of probable cause.[14] See CARL Corp., 93 Hawai'i at 165, 997 P.2d at 577 (noting that even matters that clearly involve public concern do not qualify for an exception to the mootness doctrine if "no additional 'authoritative determination' is needed" (quoting Life of the Land v. Burns, 59 Haw. 244, 251, 997 P.2d 405, 409-10 (1978))). Indeed, "there [is] no unsettled legal question for this court to address[,]" Okada Trucking Co., 99 Hawai'i at 197, 53 P.3d at 805, and the Minors' grievances are "private rather than public in nature." Cf. id. (holding that a hearings officer's interpretation of the Procurement Code qualified as an exception to the mootness doctrine on the basis that, inter alia, "a real question of law remains unsettled . . . . [and] every contractor that submits a bid for a public procurement contract in the future will be effected by the

---

[13](...continued)
argued that Minor 1 must have "agreed that there was probable cause to hold him at that point" but that he did not know "who to believe" with respect to Minor 2. Faced with this uncertainty, he suggested that the family court simply review the police reports and make a probable cause determination in order to "cure" any defect. We believe that it is unwise for this court to presume to know what took place during the December 6, 2000 probable cause hearing based on the foregoing comments by the DPA, in light of the fact that he did not participate in the December 6, 2000 hearing and he himself did not claim to know whether any evidence was introduced at the hearing.

[14] The Minors would have a more compelling case if the family court had not ensured that any alleged error was cured.

hearings officer's interpretation"). Put simply, there is no need for this court to address alleged errors that the family court has cured of its own accord in a controversy that is now moot.[15]

III. CONCLUSION

Based on the foregoing, we dismiss the Minors' appeals.

On the briefs:

Jon N. Ikenaga,
Deputy Public Defender,
for the petitioners-appellants
John Doe, Born on January 25,
1985, and John Doe, Born on
January 28, 1983

Mangmang Qiu Brown,
Deputy Prosecuting Attorney,
for the respondent-appellee,
State of Hawai'i

[15] The Minors also contend that Judge Wong erred in concluding that, irrespective of the determinations of probable cause, the family court had continuing jurisdiction over minors on probationary status pursuant to HRS § 571-31(a) (1993) and was authorized, accordingly, to place them in detention if that was deemed to be in their best interest, because, according to the Minors, "there must be a basis for detention other than the Minor's probation status." Assuming arguendo that the Minors are correct, there is no need to review the foregoing conclusion in the present matter, inasmuch as there was a valid basis for detention other than the Minors' probationary status.