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IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I,
Respondent/Plaintiff-Appellee,

vs.

ROMMEL L. BAUTISTA,
Petitioner/Defendant-Appellant.

SCWC-21-0000395

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-21-0000395; CASE NO. 2CPC-20-0000366)

SEPTEMBER 13, 2023

RECKTENWALD, C.J., MCKENNA, AND EDDINS, JJ.,
CIRCUIT JUDGE CHANG AND CIRCUIT JUDGE CASTAGNETTI,
APPOINTED BY REASON OF VACANCIES

OPINION OF THE COURT BY EDDINS, J.

I.

This criminal case involves a jurisdiction challenge and a sentencing challenge.

Rommel Bautista argues that the State of Hawai'i must refile a complaint in circuit court after a district court finds probable cause to support a felony and commits a case to circuit court. The State only filed a district court complaint, Bautista's argument goes, so the circuit court lacked subject matter jurisdiction. We disagree.

We hold that if the State files a complaint in district court, and the district court lawfully commits the case to circuit court, then the circuit court has jurisdiction.

Relying on State v. Obrero, 151 Hawai'i 472, 517 P.3d 755 (2022), Bautista challenges the circuit court's power to act another way. But Obrero has limited retroactive effect, so Bautista's Hawai'i Revised Statutes (HRS) § 801-1 (2014) attack comes too late.

Bautista also argues that the circuit court improperly imposed two consecutive sentences. Because the circuit court did not provide adequate independent grounds to impose each consecutive sentence, we remand for resentencing.

II.

The State filed a district court complaint against Rommel Bautista. The complaint alleged seven violent crimes, including attempted murder in the second degree. The victim was Bautista's wife.

The District Court of the Second Circuit held a preliminary hearing. It found probable cause to support each count. Then the court confirmed bail and committed the case to the Circuit Court of the Second Circuit.

No circuit court complaint was filed. At his arraignment in circuit court, Bautista pled not guilty.

About five months after the State charged him, Bautista and the State reached a plea deal. Bautista pled no contest to three counts, all class C felonies: assault in the second degree (HRS § 707-711(1)(a) (2014 & Supp. 2018)), terroristic threatening in the first degree (HRS § 707-716(1)(e) (2014)), and abuse of a family or household member in the presence of a minor (HRS § 709-906(1) and (9) (2014 & Supp. 2019)). Per the plea agreement, the State dropped the attempted murder charge (HRS § 705-500(2) (2014) and § 707-701.5 (2014 & Supp. 2018)), the assault in the first degree HRS § 707-710(1) (2014) charge, and two counts of abuse of a family or household member by strangulation (HRS § 709-906(1) and (8) (2014 & Supp. 2019)). There were no sentencing terms in the plea agreement. Bautista could seek probation. The State could seek any lawful sentence. The circuit court accepted Bautista's no contest pleas.

Two months later, the court held a sentencing hearing. Due to the pandemic, Bautista did not appear in court for his sentencing. He appeared via video link from the Maui Community

Correctional Center. His wife, parents and sister sat in the courtroom, supporting him. The court asked Bautista a series of questions regarding his right to be present in court. Bautista consented to the arrangement, agreeing that the court could "conduct [the] sentencing hearing and impose sentence by video conference." See Hawai'i Rules of Penal Procedure (HRPP) Rule 43(e) (3).

After the colloquy, the court indicates it read the presentence diagnosis and report it had ordered per HRS § 706-601 (2014 & Supp. 2016). The court also reviewed supportive letters from Bautista's family members, co-workers and supervisor at a Maui hotel. Bautista's wife writes: "The incident with [my husband] did not have any lasting effects on me. The only effect it has had on our son is that his father is gone and he misses his father. Please we ask for your help and kindness to lessen him years in jail." She adds, "This was the very first time he ever hit me. . . . I don't think he was serious that he wanted to kill me, he only said that because he thought I had a relationship with another man and he wanted to pressure me to admit it. . . . I still love my husband and despite what happened that night I feel safe with him if he could be on probation and be given another chance."

The court listens to the lawyers. The prosecution wants consecutive sentences, an aggregate 15-year term of imprisonment. Bautista wants probation.

After the lawyers' arguments, the court addresses Bautista: "Mr. Bautista, you know, what's worse than a jealous man is a drunk, jealous man. And that night you were drinking tequila, and you were drinking a lot of tequila, and you went off on your wife." The court describes the violent event and comments: "Your six-year-old, who was there the whole time, saw all this, saw all this." Bautista's attorney interjects, clarifying that Bautista's son only "saw the beginning of it from the living room." "Well, he saw a portion of it," the court retorts. The court expresses concern about the impacts to children who are present during acts of domestic violence. Then the court says, "You know, there was no part of your wife's body that was not untouched." The court describes her injuries: "facial bruising," "a collapsed lung," and a "fracture to not one rib but three different ribs." The court adds, "And I think the only reason you stopped was perhaps because your father was pounding on the front door." "[T]his gave an opportunity for your wife to get out of the house with the six-year-old, your son, to call a friend to pick her up, where she went to the police station that night and then later on to the hospital."

Next, the court refers to a letter Bautista composed, "You know, Mr. Bautista, your statement to the Court that you wrote was: 'I'd like to spread my wings, fly high again, and catch my . . . dreams.'" Then the court remarks, "Sure sounds like a caged bird to me. Well, I know Big Bird, Angry Birds, and jailbirds. And you know what we do with jailbirds?" "No," answers Bautista. "We clip their wings and we keep them locked up in cages."

Then the court comments, "The Court is aware that I could possibly put you on probation or give you concurrent sentences, but the Court is aware that this is a very severe case." The court says it "considered all the sentencing options and alternatives," and that it listened to Bautista's attorney's arguments, heard Bautista's statement, and read the letters submitted by his family. Bautista has no criminal record, the Court recognizes. Next it says, "I think you were kind of like a -- this all pent up inside of you and exploded that night." "So these offenses are so serious you could have killed your wife. . . . You know, she needs to protect you -- she needs to be protected. Your son needs to be protected. The community needs to be protected from this kind of behavior." The court mentions that Bautista's wife feared for her life, "[a]nd though maybe now she has changed her tune, she thought that night that she was going to die." Then the court announces its sentence:

So the Court feels that there's a need for respect for the law and you need to be justly punished and afford adequate deterrence to everyone. Will five years protect her and your family? I don't think so. Will ten years protect your wife and your family? I don't think so. Will fifteen years protect your wife and your family? Perhaps.

The court sentenced Bautista to consecutive five-year terms on each C felony count for a total of fifteen years. Later, Bautista moved to reconsider. The court denied that motion. Bautista appealed to the ICA.

On appeal, he initially, raised one issue - his sentence. He argued that the circuit court imposed consecutive terms "without an adequate rationale" and that the sentence was "based in part on the dismissed charges." Later, Bautista amended his brief to include jurisdictional arguments. Nearly one year after the filing of the opening brief, the ICA ordered supplemental briefing to address the potential impact of Obrero.

The ICA rejected Bautista's jurisdiction and sentencing challenges. It affirmed the circuit court.

Bautista applied for cert, and we accepted.

III.

A.

Without jurisdiction, a court has no power to act. "Jurisdiction is defined as the power and authority on the part of the court to hear and judicially determine and dispose of the cause pending before it." Schwartz v. State, 136 Hawai'i 258, 262, 361 P.3d 1161, 1165 (2015) (cleaned up).

Bautista argues the Circuit Court of the Second Circuit lacks jurisdiction for two reasons. First, unless there's a circuit court charging document, this court's precedent divests the circuit court of jurisdiction. Second, Hawai'i court rules require a *circuit* court complaint, not a *district* court complaint, to advance a case in circuit court.

Neither argument sways us. The circuit court had jurisdiction.

Chiefly citing State v. Kaulia, 128 Hawai'i 479, 291 P.3d 377 (2013) and Obrero, Bautista's first argument maintains that "[t]he precedent established by this Court requires the prosecution to invoke the circuit court's jurisdiction by filing a charging document in the circuit court." Bautista argues jurisdiction "must be averred in a charging document." One that's filed in the court that actually hears and resolves the case.

Kaulia doesn't help Bautista. There the State charged the defendant with a misdemeanor. At his district court arraignment, Kaulia received a district court complaint, pled not guilty and demanded a jury trial. The court committed the case to circuit court. Later in circuit court, the State moved to amend the complaint, reducing the charge to a petty misdemeanor. The court granted the motion. Since the amended offense no longer permitted a jury trial, the circuit court

remanded to district court. Down there, the State forgot to file the amended complaint. Kaulia was convicted at a bench trial and appealed. This court held that "[b]ecause the charge against Kaulia was not amended to a petty misdemeanor . . . , the district court lacked jurisdiction to proceed to trial." Id. at 491, 291 P.3d at 389.

Kaulia doesn't resemble Bautista's case for two reasons. First, in Kaulia the State failed to file an *amended* district court complaint. No valid charging document re-established district court jurisdiction. Instead, the original misdemeanor complaint was still in play. That meant Kaulia retained his constitutional right to a jury trial, and the circuit court still had jurisdiction. Id. Bautista's plight differs. The State charged him with the identical (felony) offenses in district court that were later committed to circuit court. Not only did his charges stay in circuit, they did not change when jurisdiction changed. Kaulia's did, and the district court could not invoke jurisdiction without a properly filed amended complaint.

Second, Kaulia simply signals that the *actual* charges must be filed. And in Bautista's case they were. The three counts he pled no contest to (assault in the second degree, terroristic threatening in the first degree, and abuse of a family household member in the presence of a minor) were all alleged in the

district court complaint. The circuit court handled a case that involved offenses set forth in a filed charging instrument.

Next, Bautista turns to Obrero for support. He argues the case strips the circuit court of jurisdiction. The State needs to "file a 'cognizable' charging instrument in the circuit court." He says, the "criminal proceedings in the circuit court do not start until the prosecutor files a charging document in the trial court." Bautista maintains the circuit court impermissibly "invoke[d] its own jurisdiction." It took a district court complaint and just called jurisdiction. We disagree.

Bautista misreads Obrero. The circuit court has the power to act. "The unlawfulness of the State's prosecution did not deprive the circuit court of subject-matter jurisdiction." 151 at 478 n.12, 517 P.3d at 761 n.12. Obrero gestures:

Article VI, section 1 of Hawai'i's constitution gives the courts "original and appellate jurisdiction as provided by law." And under HRS § 603-21.5(a)(1), the circuit courts have jurisdiction over "[c]riminal offenses cognizable under the laws of the State, committed within their respective circuits or transferred to them for trial by change of venue from some other circuit court." HRS § 603-21.5(a)(1) (2016 & Supp. 2021). Cognizable means capable of being known or recognized, or capable of being judicially tried or examined before a designated tribunal; within the court's jurisdiction.

Id. (cleaned up).

Per Obrero, circuit courts have subject matter jurisdiction over recognized criminal offenses. Obrero does not mean the circuit court loses jurisdiction if the State fails to re-file a

complaint there. Here the charging instrument alleges seven felonies, all cognizable, real-live offenses under Hawai'i law. Because the charges are actual crimes, capable of being recognized, they confer circuit court jurisdiction.

Bautista misreads Obrero another way. Because the State did not *indict* him, Bautista argues, "the prosecution is unlawful." Obrero held that charging a defendant with a felony by complaint, rather than through an indictment or information, violates HRS § 801-1. Id. at 478, 517 P.3d at 761. That's what happened to him! Bautista insists. The State initiated felony charges through a district court complaint. Without the correct charging instrument - indictment or information - his case never really existed.

Like Bautista's other Obrero-infused jurisdictional argument, dicta foretells the challenge: "[H]ad Obrero challenged the State's failure to comply with HRS § 801-1 for the first time on appeal, we would presume the validity of the complaint against him and would not reverse his conviction absent a showing that the complaint prejudiced him or could not be construed to charge a crime." Id. at 478 n.11, 517 P.3d at 761 n.11. (citing State v. Wheeler, 121 Hawai'i 383, 399, 219 P.3d 1170, 1186 (2009)).

This court may determine a decision's retroactive impact. See State v. Garcia, 96 Hawai'i 200, 211, 29 P.3d 919, 930 (2001)

(explaining that "state courts generally have the authority to determine the retroactivity of their own decisions." (quoting American Trucking Ass'ns, Inc. v. Smith, 496 U.S. 167, 177 (1990))).

We hold that Obrero applies to cases that were pending trial before the decision. Obrero does not apply retroactively to defendants who pled out or to defendants convicted after a trial. So defendants awaiting sentencing, or those challenging a charging instrument's validity for the first time on appeal (like Bautista) or even later per HRPP Rule 40, are foreclosed from having their pleas nullified or their trial convictions overturned per HRS § 801-1.

Obrero signals that a retroactive effect based on the timing of an HRS § 801-1 challenge is an appealing outcome. First, it aligns with the interests of justice - vacating virtually every conviction initiated by a felony complaint does not. Second, it matters that sentenced and pre-sentence defendants understood the "nature and cause of the action" and were convicted of recognizable crimes. An existential argument about the prosecution never really happening because of HRS § 801-1 non-compliance ignores constitutional compliance. See Hawai'i Constitution article I, section 14, Sixth Amendment to the United States Constitution. Third, the approach closely aligns with our unlawful charging instrument cases. See e.g.

Wheeler, 121 Hawai'i at 399-400, 219 P.3d at 1186-87 (ruling that court will not reverse a conviction based upon a defective charging document unless the defendant shows prejudice or the document cannot within reason be construed to charge a crime).

We turn to Bautista's rules-based jurisdictional argument. Bautista repeats that once the district court finds probable cause and sets bail, the prosecution must file a charging document in the circuit court to invoke that court's jurisdiction. Otherwise, the court breaks the rules. The rules don't allow a district court complaint to control what happens in circuit court.

The Hawai'i Rules of Penal Procedure roadmap a felony case's migration from district to circuit court. "A complaint may be filed in *either the district or circuit court*; provided that a complaint shall not be filed initially in the circuit court when it charges: (i) a felony, and none of the 3 conditions set forth in *Rule 7(b)* of these rules has yet occurred, or (ii) only an offense or offenses other than a felony." HRPP Rule 7(h)(2) (emphases added).

In turn, HRPP Rule 7(b) lists three conditions to prosecute a felony by complaint: if a district judge finds probable cause at a preliminary hearing, the defendant waives the right to a hearing, or the defendant waives the right to an indictment.

After the State files a complaint alleging felonies in district court, that court makes a probable cause determination. That is, unless the State later indicts the defendant or files a felony information. See HRS § 805-7 (2014). Here, the State did not indict or file a felony information. And Bautista did not waive indictment or preliminary hearing per HRPP Rule 7(b). The district court held a preliminary hearing and found probable cause to support all charges.

Then, HRPP Rule 5(c)'s transmit-the-evidence-and-documents to circuit court provisions kick in. "If the defendant is held to answer in the circuit court, the court shall transmit to the circuit court all papers and articles received in evidence at the preliminary hearing and any bail received by it." HRPP Rule 5(c)(6). HRPP Rule 5(c)(7) directs that the district court clerk "shall transmit to the circuit court all documents in the proceeding."

Bautista argues HRPP Rule 7(h)(2) "contemplates that after a preliminary hearing and commitment, the prosecution must then file a complaint alleging felony offenses in the circuit court or initiate proceedings with an indictment or felony information." But nothing in HRPP Rule 7 (or anywhere) backs Bautista.

No rule requires the State to file a second complaint in circuit court. It's plain, "[a] complaint may be filed in

either the district or circuit court." HRPP Rule 7(h)(2) (emphasis added). Also, there's no requirement in chapters 805 and 806, covering criminal procedure in district court and circuit court, to refile a complaint after commitment from district court.

There is no basis in Hawai'i law to conclude that the circuit court lacked subject matter jurisdiction.

B.

We go to Bautista's sentencing challenge.

We hold that the circuit court inadequately justified Bautista's consecutive sentences. The court erred by not articulating a clear and comprehensive rationale for each consecutive sentence.

Sentencing courts have broad discretion. The "standard of review for sentencing or resentencing matters is whether the court committed plain and manifest abuse of discretion in its decision." State v. Barrios, 139 Hawai'i 321, 328, 389 P.3d 916, 923 (2016). This review standard, though, doesn't hand appellate courts a rubber-stamp, especially when it comes to a consecutive sentence.

A trial court considers many factors at every sentencing hearing. See HRS § 706-606 (2014) (key factors are "[t]he nature and circumstances of the offense and the history and characteristics of the defendant.") Absent clear evidence to

the contrary, it is presumed that a sentencing court will have considered all factors before imposing concurrent or consecutive terms of imprisonment under HRS § 706-606. State v. Hussein, 122 Hawai'i 495, 518, 229 P.3d 313, 336 (2010).

Concurrent sentences are the default. Under HRS § 706-668.5(1) (Supp. 2015), "where a defendant is convicted of multiple offenses, there exists a presumption that '[m]ultiple terms of imprisonment run concurrently, unless the court orders or the [applicable] statute mandates that the terms run consecutively.'" Lewi v. State, 145 Hawai'i 333, 350, 452 P.3d 330, 347 (2019). The sentencing court must adequately distinguish between the need for consecutive sentences and the sentence a defendant "would have received under the presumption of concurrent sentencing." Id. at 351, 452 P.3d at 348.

A sentencing court must provide "a meaningful rationale to the defendant, the victim, and the public." Hussein, 122 Hawai'i at 509, 229 P.3d at 327. Courts "must state on the record at the time of sentencing the reasons for imposing a consecutive sentence." Id. at 510, 229 P.3d at 328.

Even if a court uses identical factors to support multiple consecutive sentences, it must "specify [the] basis or identify another basis for determining how many consecutive sentences to impose." Barrios, 139 Hawai'i at 337, 389 P.3d at 932. Barrios stresses the importance of identifying the rationale for each

consecutive sentence: "a clearly articulated rationale is necessary when there is a large disparity between the maximum statutory sentence for each offense and the aggregate consecutive sentence imposed by the court." Id. at 338, 389 P.3d at 933. In Sandoval, this court reinforced that stringent standard, requiring courts to provide clearly articulated reasons for "each and every consecutive sentence." State v. Sandoval, 149 Hawai'i 221, 236, 487 P.3d 308, 323 (2021) (emphasis added).

The circuit court did not follow these directives. It gave a suboptimal explanation for each consecutive sentence.

To recap, before the court rules on the State's motion for consecutive sentencing, it expresses legitimate concern about the impact on Bautista's son of viewing the violence. And it describes the physical harm Bautista caused to his wife. Then, after the "clip their wings and put them in cages" quip, the court says it looked at the sentencing factors and "considered all the sentencing options and alternatives." The court acknowledges that Bautista has no prior record. But otherwise it overlooks Bautista's history and characteristics.

Bautista asked for a probationary sentence. It fit HRS § 706-606's statutory criteria and satisfied the interests of justice. The court disagreed. It imposed consecutive sentences. 15 years. The court explained its rationale:

So the Court feels that there's a need for respect for the law and you need to be justly punished and afford adequate deterrence to everyone. Will five years protect her and your family? I don't think so. Will ten years protect your wife and your family? I don't think so. Will fifteen years protect your wife and your family? Perhaps.

This is not enough. A court's rationale must be tethered to each consecutive sentence. The court acted as if it were sentencing Bautista on one count with a potential range of 0 to 15 years. The court did not communicate "a rational basis for each consecutive sentence that it imposed." Barrios, 139 Hawai'i at 337, 389 P.3d at 932. It "did not sufficiently explain its decision to impose multiple consecutive sentences." Id. Courts must give substantial and pointed reasons to justify a consecutive sentence. Reciting sentencing factors and offense circumstances may sometimes work for a concurrent sentencing disposition. However, it does not justify running a sentence consecutively.

The court gave Bautista the maximum aggregate sentence. But it offered no rationale for each consecutive sentence. The court focused almost entirely on the criminal incident itself. The court did not distinguish the three offenses, class C felonies carrying a 5-year maximum sentence, and instead treated them as one offense.

Barrios involved different events and multiple victims. Id. at 325, 389 P.3d at 920. So did a recent case, State v. Perry, 153 Hawai'i 185, 187, 528 P.3d 524, 526 (2023) (affirming

consecutive sentences for two separate murders, committed days apart in the same criminal case). As did Hussein. 122 Hawai'i at 498-99, 229 P.3d at 316-17. Sandoval too. It involved consecutive sentences for separate instances of harassment with multiple victims. 149 Hawai'i at 226, 487 P.3d at 313.

The "nature and circumstances" of same event, same victim cases are different from multiple event cases with multiple victims. See Perry, 153 Hawai'i at 190, 528 P.3d at 529. Stacking sentences after merely reciting a case's circumstances is an abuse of discretion. "[A] sentencing court should explain its rationale for each consecutive sentence in order to inform the defendant and appellate courts of the specific factors underlying each sentence." Barrios, 139 Hawai'i at 337, 389 P.3d at 932. Here, rather than explaining each sentence, the court merely talked about the incident and commented that fifteen years of imprisonment may protect the Bautista family. A consecutive sentence is a severe sentence. Our law requires a court to do much more than express a desire to clip a person's wings, and put them in a cage.

IV.

We vacate the ICA's Judgment on Appeal related to sentencing, and vacate the circuit court's Judgment, Conviction

and Sentence related to sentencing. We remand to the circuit court for resentencing.

Benjamin E. Lowenthal
for petitioner

Gerald K. Enriques
for respondent

/s/ Mark E. Recktenwald
/s/ Sabrina S. McKenna
/s/ Todd W. Eddins
/s/ Gary W.B. Chang
/s/ Jeannette H. Castagnetti

