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**Facts of the Case**

At around 3:10 a.m. on September 28, 2014, a Maui Police Department (MPD)

officer arrested George Fukuoka for Operating a Vehicle Under the Influence of an

Intoxicant (OVUII). Fukuoka posted bail and was released from custody the same

day, and he was ordered to appear at the District Court of the Second Circuit,

Molokaʻi Division, on October 28, 2014.

On October 22, 2014, the State of Hawaiʻi filed a five-count complaint in the district

court. The five counts alleged that Fukuoka committed the offenses of OVUII in

violation of Hawaiʻi Revised Statutes (HRS) §§ 291E-61(a)(1) and/or 291E-61(a)(3)

and 291E-61(b) (count 1), inattention to driving in violation of HRS § 291-12 (count

2), reckless driving in violation of HRS § 291-2 (count 3), duty upon striking an

unattended vehicle or other property in violation of HRS § 291C-15 (count 4), and

lack of due care in violation of Maui County Code (MCC) § 10.52.010 (count 5).

On October 28, 2014, Fukuoka appeared at the district court for arraignment and

entered a plea of not guilty. The court set a pretrial conference for November 25,

2014.

At the November 25, 2014, pretrial conference, Fukuoka requested that he be

permitted to issue a subpoena duces tecum for the personnel and internal affairs

files of four MPD police officers involved in his case. Fukuoka believed these four

officers might be called as witnesses for the State at his trial, and he therefore

sought information that he could potentially use in conducting cross-examination.

On December 12, 2014, the court issued an order permitting the defense to issue a

subpoena duces tecum to MPD.

Fukuoka served two subpoenas to MPD on December 9, 2014, requesting

production of the requested documents. On December 18, 2014, counsel for the

County of Maui (County), on behalf of the MPD, moved to quash the subpoenas

duces tecum (Motion to Quash). A hearing on the Motion to Quash was set for

December 23, 2014. At the December 23, 2014 hearing, proceedings were

continued until January 27, 2015.

Prior to January 27, 2015, the court ordered the County to file under seal certain

responses to the subpoenas so that the court could review them in camera. At the

January 27, 2015 hearing, the court continued the matter to February 10, 2015,

and at that hearing, it scheduled a status conference for February 20, 2015.

At the February 20, 2015 status conference, Fukuoka and the County agreed to a

protective order regarding the personnel and internal affairs files to be produced

pursuant to the subpoenas. The court filed an order granting in part and denying in

part the County’s Motion to Quash later that day. The court also set Fukuoka’s

case for trial on March 24, 2015.

On February 27, 2015, the court issued an order resetting the March 24, 2015 trial

date to April 14, 2015. The order stated that the new date was necessary due to a

previously scheduled trial.

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On April 14, 2015, before trial commenced, Fukuoka filed with the court a motion to

dismiss the complaint (Motion to Dismiss) on the ground that his statutory and

constitutional rights to a speedy trial had been violated.

In his Motion to Dismiss, Fukuoka argued that Hawaiʻi Rules of Penal Procedure

(HRPP) Rule 48 required the court to dismiss the charges because over six

months had elapsed from the date of his arrest. Although Fukuoka acknowledged

that certain periods of time may be excluded from the six-month calculation under

HRPP Rule 48, he contended that none of the exclusions were applicable in this

case. Fukuoka asserted that, pursuant to HRPP Rule 48 and State v. Estencion,

63 Haw. 264, 625 P.2d 1004 (1981), his case should be dismissed with prejudice

because: (1) all of the charges against him were not serious as they were petty

misdemeanor offenses; (2) the court itself bore the responsibility for the delay,

including the continuances granted following the County’s Motion to Quash; (3)

Fukuoka had been prejudiced by the delay; and (4) a reprosecution in his case

would frustrate the administration of justice and HRPP Rule 48.

After Fukuoka presented his Motion to Dismiss at the April 14, 2015 hearing, the

State argued that a dismissal of the charges should not be granted because many

of the continuances were the result of Fukuoka’s own delay and because Fukuoka

had not timely requested a trial. The State also submitted that it was ready to

proceed with trial and that MPD police officers were en route to Molokaʻi to testify.

After hearing argument from both parties, the district court dismissed the complaint

without prejudice.

On April 28, 2015, Fukuoka filed a motion for reconsideration asking that the court

reconsider its decision to dismiss his case without prejudice, which permitted the

case to be reprosecuted. The motion was heard and orally denied by the district

court on May 26, 2015.

Fukuoka appealed the district court’s determination to the Intermediate Court of

Appeals (ICA). In a Summary Disposition Order (SDO), the ICA affirmed the

district court’s dismissal without prejudice. The ICA noted that in deciding whether

to dismiss a case with or without prejudice under HRPP Rule 48, the decision in

State v. Estencion, 63 Haw. 264, 625 P.2d 1004 (1981), required the district court

to consider (1) the seriousness of the offense, (2) the facts and circumstances that

led to the dismissal, and (3) the impact of reprosecution on the administration of

HRPP Rule 48 and on the administration of justice. The ICA rejected Fukuoka’s

argument that his offenses were not “serious” and determined that the district court

in ruling on the seriousness of the offense was entitled to consider a multitude of

factors (including the fact of multiple charges), rather than limiting its analysis to

the possible punishment or the constitutional rights implicated by the charged

offenses.

Question Presented:

The issue on certiorari to this court is whether the ICA correctly concluded that the

district court did not abuse its discretion in dismissing Fukuoka’s case without

prejudice based on HRPP Rule 48 and the three-factor test established by this

court in State v. Estencion, 63 Haw. 264, 625 P.2d 1004 (1981).

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Arguments Presented by Both Sides:

Petitioner/Defendant-Appellant Fukuoka:

Fukuoka argues that the district court misapplied the three-factor test of Estencion,

contending that his offenses were not “serious” because they were classified as

petty misdemeanor offenses and, therefore, his case should have been dismissed

with prejudice. In support of his argument, Fukuoka points to federal case law

under the analogous federal Speedy Trial Act holding that misdemeanor or petty

misdemeanor offenses are not considered “serious” when determining whether to

dismiss with or without prejudice. Fukuoka also contends that the district court in

its analysis did not place sufficient weight on the maximum possible penalties for

the offenses of which he was charged. Fukuoka seeks a ruling that petty

misdemeanor offenses are not “serious offenses” as a matter of law in the context

of HRPP Rule 48.

Respondent/Plaintiff-Appellee State of Hawaiʻi:

The State argues that Fukuoka did not properly preserve his arguments on appeal

because, although he appealed the district court’s orders dismissing the case and

denying his motion for reconsideration, he failed to specifically appeal the court’s

findings of fact and conclusions of law. In the alternative, the State contends that

the district court correctly applied the Estencion factors. The State also rejects

Fukuoka’s argument that petty misdemeanors are categorically non-“serious”

offenses, stating that a petty misdemeanor offense carries a possible 30 days’

imprisonment and that in this case, Fukuoka was also charged with other “serious”

traffic offenses. The State also submits that dismissal without prejudice was

proper because none of the continuances were made at the request of the State

and because the State had no power over the proceedings regarding the

subpoena, which were in large part controlled by the County on behalf of the MPD.

Legal Provisions

• HRPP Rule 48

• State v. Estencion, 63 Haw. 264, 625 P.2d 1004 (1981)

Advocates

• Petitioner: Hayden Aluli, Attorney at Law

• State of Hawaiʻi: Richard K. Minatoya, Deputy Prosecuting Attorney,

Department of the Prosecuting Attorney for the County of Maui