Electronically Filed
Supreme Court
SCMF-20-0000152
27-AUG-2020
11:25 AM

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IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

In the Matter of the Judiciary's Response
to the COVID-19 Outbreak

ORDER REGARDING TEMPORARY EXTENSION OF THE TIME REQUIREMENTS UNDER HAWAIʻI RULES OF PENAL PROCEDURE RULE 5(c)(3)
(By: Recktenwald, C.J., Nakayama, and McKenna, JJ., and Chief Judge Ginoza, assigned by reason of vacancy, with Wilson, J. dissenting[1])

The COVID-19 pandemic has caused a public health emergency. In response to the pandemic, the Judiciary postponed non-urgent court business and limited in-person proceedings in an effort to ensure the health and safety of court users and Judiciary personnel, and to minimize the risk of spreading COVID-19 in the courts. As COVID-19 cases remained low, court operations resumed in accordance with public health safety guidance, and to the extent possible with available resources. Criminal proceedings have proceeded in-person and by video conference in accordance with court rules and as feasible.

[1] A dissent by Wilson, J., is forthcoming.

Since July 2020, however, there has been a surge of COVID-19 cases in Hawai‘i, with record numbers of positive cases and increased hospitalizations being reported. There has also been a surge of COVID-19 cases in our community correctional centers and facilities, particularly at the O‘ahu Community Correctional Center ("OCCC"). Currently, over two hundred forty inmates at OCCC and more than fifty staff members have tested positive for COVID-19. As a result, inmates are being held in quarantine and the transport to court of custody defendants has been suspended. This impacts the time requirements for preliminary hearings under Hawai‘i Rules of Penal Procedure Rule 5(c)(3). Further, in a letter to the court dated August 18, 2020, the Office of the Public Defender requested the temporary suspension of, *inter alia*, HRPP Rule 5(c)(3), noting that defendants released from OCCC on bail or otherwise may need to quarantine and comply with isolation requirements, and that allowing the courts to continue matters for non-custody defendants would assist in those endeavors.

HRPP Rule 5(c)(3) provides the following time requirements for a preliminary hearing:

> The court shall conduct the preliminary hearing within 30 days of initial appearance if the defendant is not in custody; however, if the defendant is held in custody for a period of more than 2 days after initial appearance without commencement of a defendant's preliminary hearing, the court, on motion of the defendant, shall release the defendant to appear on the defendant's own recognizance, unless

> failure of such determination or commencement is caused by the request, action or condition of the defendant, or occurred with the defendant's consent, or is attributable to such compelling fact or circumstance which would preclude such determination or commencement within the prescribed period, or unless such compelling fact or circumstance would render such release to be against the interest of justice.

If a defendant is in custody, a preliminary hearing must be held within 2 days after the initial appearance, subject to certain considerations. If a defendant is not in custody, a preliminary hearing is to be held within 30 days of the initial appearance. Given the temporary suspension of transport of custody defendants at OCCC, the circumstances that defendants released from OCCC or other facilities may need to quarantine and comply with isolation requirements, the recent rise of COVID-19 cases, limited resources, and the need to protect the health and safety of court users, Judiciary staff, the public, and the defendants, the time periods under HRPP Rule 5(c)(3) by which a preliminary hearing for a defendant must be held is not always feasible or logistically possible.

The current public health emergency and the changing conditions require flexibility and vigilance. Under these circumstances, a temporary suspension of the time requirements set forth under HRPP Rule 5(c)(3) for first circuit criminal matters is necessary.

Accordingly, pursuant to article VI, section 7 of the Hawai‘i Constitution and Hawai‘i Revised Statutes ("HRS") § 602-5(a)(6), Governor David Y. Ige's Emergency Proclamations, and HRS § 601-1.5,

IT IS HEREBY ORDERED that the Circuit Court of the First Circuit may temporarily extend the time requirements for preliminary hearings, as set forth under HRPP Rule 5(c)(3), no longer than reasonably necessary to protect public health and safety. Judges, however, are strongly encouraged to follow the time requirements and provisions set forth under HRPP Rule 5(c)(3) to the extent possible, and to utilize remote technology as feasible.

This order is effective as of the date of filing and shall expire on September 17, 2020, unless otherwise modified or extended.

Dated: Honolulu, Hawai‘i, August 27, 2020.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Lisa M. Ginoza