

Electronically Filed
Supreme Court
SCWC-20-0000650
20-OCT-2022
01:42 PM
Dkt. 9 MEO

SCWC-20-0000650

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

STATE OF HAWAI‘I,	)	CASE NO. 1PC091001524
)	
Respondent/Plaintiff-Appellee,	)	RESPONSE IN OPPOSITION TO
	)	PETITIONER/DEFENDANT-APPELLANT
vs.	)	STANLEY CANOSA’S MOTION FOR
	)	IMMEDIATE RELEASE PENDING
STANLEY CANOSA,	)	DECISION
)	
Petitioner/Defendant-Appellant.	)	INTERMEDIATE COURT OF APPEALS
)	
	)	HONORABLE LISA M. GINOZA
	)	Chief Judge
	)	HONORABLE KATHERINE G. LEONARD
	)	HONORABLE KEITH K. HIRAOKA
	)	Associate Judges
)	

**RESPONSE IN OPPOSITION TO PETITIONER/DEFENDANT-APPELLANT
STANLEY CANOSA’S MOTION FOR IMMEDIATE RELEASE PENDING DECISION**

and

CERTIFICATE OF SERVICE

STEVEN S. ALM 3909
Prosecuting Attorney
STEPHEN K. TSUSHIMA 7475
Deputy Prosecuting Attorney
City and County of Honolulu
1060 Richards Street
Honolulu, Hawai‘i 96813
Telephone: (808) 768-7455
Email: stsushima@honolulu.gov

Attorneys for State of Hawai‘i
Respondent/Plaintiff-Appellee

**RESPONSE IN OPPOSITION TO PETITIONER/DEFENDANT-APPELLANT
STANLEY CANOSA’S MOTION FOR IMMEDIATE RELEASE PENDING DECISION**

Comes now Respondent/Plaintiff-Appellee STATE OF HAWAI‘I (“the State”), and files this Response in Opposition to Petitioner/Defendant-Appellant Stanley Canosa’s Motion for Immediate Release Pending Decision pursuant to Hawai‘i Rules of Appellate Procedure (“HRAP”) Rule 27(a) (2022). After reviewing Petitioner/Defendant-Appellant Stanley Canosa’s Motion for Immediate Release Pending Decision (“Motion for Immediate Release”), the State believes that this Honorable Court should deny the motion for the reasons stated below.

On October 19, 2022, Petitioner/Defendant-Appellant STANLEY CANOSA (“Petitioner”) filed his Motion for Immediate Release pursuant to HRAP Rules 9(b) and 27 (2022). See generally, Motion for Immediate Release, JEFS docket entry number (“JEFS Dkt. #”) 7¹. Petitioner “requests his motion be granted because of the reasons set forth in his declaration of counsel.” JEFS Dkt. #7, PDF at 4. However, counsel’s declaration merely attempts to regurgitate the arguments on the merits already before this Honorable Court. The State responds to counsel’s arguments below.

First, in paragraph 3 of the Declaration of Shawn A. Luiz (“counsel’s declaration”), counsel claims that “[t]his case is going to be one of first impression in this jurisdiction although the like issue has been before the U.S. Supreme Court and other courts of other jurisdictions several times, i.e. once the ordinary terms expires, the extended sentence cannot be imposed.” JEFS Dkt. #7, PDF at 6. However, counsel has never cited a case for this proposition in any of his prior submissions, nor does he now. There are, however, a plethora of cases where the supreme courts from other states have considered whether an alleged unconstitutional delay in sentencing should be viewed the same way as the asserted denial of the right to speedy trial. See, e.g., Jolly v. State, 358 Ark. 180 (Ark. 2004) (acknowledging that “there are at least seventeen state courts that have recognized that a defendant’s speedy-trial rights encompass the right to a speedy sentence”); Harris v. State, 956 A.2d 1273 (Del. 2008) (noting that the defendant’s failure to assert his right to a speedy sentencing weighed against him as a factor “of considerable significance in determining whether there has been a speedy [sentencing] violation”); and State

¹ Since documents, including the Record on Appeal, are filed with JEFS, the State shall cite to the JEFS docket entry number and the PDF page(s) in citing to documents.

v. Johnson, 363 So.2d 458 (La. 1978) (holding that defendant’s constitutional right to a speedy trial did not encompass sentencing).

In paragraph 12 of counsel’s declaration, counsel cites to United States v. Christian, 668 Fed.Apps. 820 (9th Cir. 2016) (unpublished memorandum opinion) from the United States Court of Appeals, Ninth Circuit (“Ninth Circuit”), claiming that it supports his position. Counsel merely copy and pasted the two-page memorandum opinion in its entirety. Significantly, in Christian, the Ninth Circuit found that the defendant “does not have a sufficient number of ‘violent felony’ predicates under the enumerated-offense clause to sustain an ACCA sentence enhancement.” Christian, *supra*. The Ninth Circuit vacated the defendant’s sentence and concluded that “[b]ecause [the defendant] has already served longer than the statutory maximum sentence for a non-ACCA-enhanced felon-in-possession conviction . . . [the defendant should] be released immediately from custody.” *Id.* Conversely, in the instant case, when Petitioner appealed his sentence, he never challenged the jury’s verdict with respect to finding him a persistent and multiple offender to which the extended sentences were necessary for the protection of the public. Thus, the Hawai‘i Intermediate Court of Appeals (“ICA”) held that it was within the circuit court’s discretion to sentence Petitioner to extended terms of imprisonment. Christian would only be similar to this case if this Court somehow found that the circuit court was without authority to impose extended sentences based on insufficient evidence that Petitioner was a persistent and multiple offender and that it was necessary for the protection of the public to extend his sentences. This Court will not make such a finding.

In paragraph 14 of counsel’s declaration, counsel claims that “Petitioner has decidedly been repeatedly deprived of the appearance of justice in this case.” JEFS Dkt. #7, PDF at 9. Counsel references amongst his deprivation of the appearance of justice, *inter alia*, that when his Application for a Writ of Certiorari was denied in January of 2019, “Petitioner was ultimately not resentenced until June 4, 2020, when his maximum sentence under the underlying charges was fulfilled on September 29, 2019, ten years following his arrest and having been held in custody since September 29, 2009.” *Id.* However, counsel omits that he admitted at the oral argument before the ICA that such delay in Petitioner’s resentencing to June of 2020 was done by the defense intentionally and for strategic reasons. See, Oral Arguments Recordings Archive, CAAP-20-0000650, April 20, 2020, at approximately the 18 minute 38 second mark. Thus, counsel admitted that such delay was strategic so that he could argue before the appellate court

the appearance of injustice that he now claims. In other words, the defense admitted that it was hoping that by intentionally not asking to be resentenced sooner, it could successfully argue for a complete release from custody from this Court. The State submits that such gamesmanship should not be considered by this Honorable Court as an actual or appearance of injustice. See, Harris, *supra*.

Additionally, counsel argues that Petitioner “was re-sentenced without an updated Pre-Sentence Investigation or a new Pre-Sentence Investigation and without being able to request reconsideration pursuant to Hawaii Rules of Penal Procedure 35(b) as the trial court would not consider anything related to extended sentencing. The trial court refused to allow Petitioner an allocution at sentencing as well.” *Id.* First, Petitioner has never argued in his submissions on appeal that the circuit court erred in sentencing him without an updated pre-sentence investigation report. Here, Petitioner (as with the rest of his arguments in his submissions) again fails to cite to any authority for the proposition that the failure to create an updated pre-sentence report amounts to an erroneous resentencing.

Moreover, however, counsel mischaracterizes Petitioner’s resentencing, particularly with respect to the circuit court’s consideration of matters relating to extended sentencing. A review of the transcript of proceedings held on June 4, 2020, reveals that Petitioner, himself, pointed out to the circuit court that the extended sentences were not upheld by the ICA and that the circuit court agreed with Petitioner that his entire sentence was vacated by the ICA. See, State v. Canosa, No. CAAP-20-0000650, Transcript of Proceedings held on June 4, 2020, at 16. The circuit court then provided Petitioner an opportunity to address the court with respect to his resentencing. Transcript at 21. At the resentencing, Petitioner then merely made bold claims that he “cannot have one fair opportunity for present mitigation and allocution of [his] sentence” to the sentencing court and that he believed the court would “give [him] one more enhanced sentence” in order to avoid the State being civilly liable for holding him beyond the ordinary terms. Transcript at 22-23. However, Petitioner’s bold claim that the circuit court would not be fair does not amount to prejudice or even an appearance of prejudice or injustice. The mere fact that Petitioner was facing a resentencing which included the possibility of extended sentences at a time when the ordinary maximum sentence had past cannot, in and of itself, amount to an appearance of injustice or prejudice because a defendant claims he does not believe the court will be fair. Such matters have occurred in the resentencing of numerous defendants based on

Apprendi issues requiring resentencing for extended terms at a time beyond the defendants' ordinary maximum sentences. Those sentences should not be found to be inherently unjust for such reason, nor should the instant extended sentences be found unjust or appear to be unjust.

In paragraph 14 of counsel's declaration, counsel claims that "[f]or six years Petitioner remained arrest free and none of that information was considered by the trial court on June 4, 2020." JEFS Dkt. #7, PDF at 10. Counsel points to nowhere in the record to support such a claim. To be certain, the circuit court explicitly stated that "[t]he Court's sentence is based on the entirety of the record" and that it was "taking judicial notice of the entire record and files[.]" Transcript at 23-24. Indeed, the circuit court stated that it "did go back and review the presentence report, the entire sentencing transcript, the jury verdict findings" and concluded that "[a]ll sentencing options are available to the Court." Transcript at 24. Under these circumstances, Petitioner fails to demonstrate that his remaining arrest free was not considered by the sentencing court.

After reviewing the Motion for Immediate Release filed by Petitioner, the State believes both parties have adequately presented to this Court their positions on the issues as well as fully exhausted their arguments with regard to the relevant case law. Here, the State submits Petitioner has not provided sufficient explanation why this Court should grant his Motion for Immediate Release. Notwithstanding Petitioner's claim to the contrary, the State submits this Honorable Court should exercise its discretion in denying the Motion for Immediate Release as this case and the issues presented should be decided on the merits before such action should even be considered. Based upon the foregoing reasons, the State respectfully requests this Honorable Court deny Petitioner's Motion for Immediate Release.

Dated at Honolulu, Hawai'i: October 20, 2022.

Respectfully submitted,

STATE OF HAWAI'I
Respondent/Plaintiff-Appellee

By STEVEN S. ALM
Prosecuting Attorney

By /s/ STEPHEN K. TSUSHIMA
Deputy Prosecuting Attorney
City and County of Honolulu

SCWC-20-0000650

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

STATE OF HAWAI‘I,	)	CASE NO. 1PC091001524
)	
Respondent/Plaintiff-Appellee,	)	RESPONSE IN OPPOSITION TO
	)	PETITIONER/DEFENDANT-APPELLANT
vs.	)	STANLEY CANOSA’S MOTION FOR
	)	IMMEDIATE RELEASE PENDING
STANLEY CANOSA,	)	DECISION
)	
Petitioner/Defendant-Appellant.	)	INTERMEDIATE COURT OF APPEALS
)	
	)	HONORABLE LISA M. GINOZA
	)	Chief Judge
	)	HONORABLE KATHERINE G. LEONARD
	)	HONORABLE KEITH K. HIRAOKA
	)	Associate Judges
)	

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2022, one (1) copy of the **Response in Opposition to Petitioner/Defendant-Appellant Stanley Canosa’s Motion for Immediate Release Pending Decision** was served by electronic notification through JEFS to the following:

SHAWN A. LUIZ @ attorneyLuiz@gmail.com
Attorney for Petitioner/Defendant-Appellant

/s/ STEPHEN K. TSUSHIMA
Deputy Prosecuting Attorney
City and County of Honolulu