

SUPREME COURT OF THE STATE OF HAWAI‘I

Grube v. Trader

420 P.3d 343 (Haw. 2018) · No. SCPW-17-0000927 · Decided June 5, 2018

SUMMARY

The Hawai‘i Supreme Court granted Nick Grube’s petition for writs of prohibition and mandamus concerning sealed records from a criminal proceeding. The court held that the circuit court failed to provide adequate notice and an opportunity for the public to object to sealing, did not sufficiently articulate its reasons, and lacked a compelling justification to overcome the constitutional right of access. The court also held that Grube could represent himself in the unsealing proceedings and directed the circuit court to unseal the records subject to a limited opportunity for further proceedings.

CASE DETAILS

COURT	Supreme Court of the State of Hawai‘i
WRITING FOR THE COURT	Justice Pollack; Chief Justice Recktenwald; Justice McKenna; Justice Wilson; Circuit Judge Viola
JURISDICTION	Hawaii
DECIDED	June 5, 2018
DOCKET	SCPW-17-0000927
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Original proceeding on a petition for writs of prohibition and mandamus seeking access to sealed judicial records and permission for Grube to represent himself in the unsealing proceedings.
STANDARD OF REVIEW	The Supreme Court reviewed whether the circuit court satisfied the constitutional and procedural requirements governing closure or sealing of criminal proceedings and records, and whether extraordinary writ relief was warranted. Mandamus was appropriate because delayed appellate review would not provide an adequate remedy for a constitutional right of contemporary public access.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Nick Grube v. The Honorable Rom A. Trader, State of Hawai‘i, Alan Ahn, Tiffany Masunaga

TOPICS

writ of certiorari

appellate procedure

criminal procedure

first amendment

due process

PRACTICE AREAS

appellate procedure

constitutional law

criminal procedure

remedies

QUESTIONS PRESENTED

1. Whether the circuit court complied with the procedural requirements for sealing criminal-court records, including notice, an opportunity for interested members of the public to be heard, and specific findings.
2. Whether the circuit court satisfied the substantive requirements for overcoming the public's constitutional right of access by identifying a compelling interest, finding a substantial probability of irreparable harm, and considering less restrictive alternatives.
3. Whether Grube could represent himself in proceedings asserting his personal constitutional right of access to judicial records.
4. Whether writs of mandamus and prohibition were appropriate remedies.

HOLDINGS

1. A court may not seal criminal-court proceedings or records without providing the public reasonable notice and a meaningful opportunity to object or propose alternatives, and without articulating the reasons for closure in specific findings. The circuit court failed to satisfy these requirements.
2. To overcome the constitutional right of public access, a court must make specific findings that closure serves a compelling interest, disclosure presents a substantial probability of irreparable harm to that interest, and no less restrictive alternative would adequately protect it. The circuit court's generalized assertions about ongoing investigations, possible interference, and safety risks did not satisfy any of these requirements.
3. A member of the public asserting an individual constitutional right of access to judicial proceedings and records may represent himself, and the circuit court erred by requiring Grube to retain counsel.
4. Mandamus is an appropriate remedy to compel compliance with the constitutional access requirements and unseal the records when ordinary appellate review would result in untimely relief.

KEY QUOTATIONS

“The right of access protected by the First Amendment and article I, section 4 of the Hawai‘i Constitution can only be overcome by findings that “the closure is essential to preserve higher values” and that the closure is “narrowly tailored” to serve that interest.” (opinion at 23)

“Because one of these procedural requirements and all three of the substantive requirements were not satisfied in this case, the circuit court erred by ordering all documents related to the September 9 proceeding sealed from the public.” (opinion at 33)

“Accordingly, we grant Grube’s petition for a writ of mandamus and order that the circuit court unseal the documents.” (opinion at 36)

FACTUAL BACKGROUND

The circuit court sealed all documents and information relating to a September 9, 2016 hearing in a criminal case involving Alan Ahn and Tiffany Masunaga. The court justified continued sealing by referring generally to ongoing investigations and possible risks to individuals, but did not provide specific supporting findings or meaningfully consider alternatives such as redaction. Nick Grube, a reporter, moved to unseal the records and asserted his personal constitutional right of access, but the circuit court required him to obtain counsel.

PROCEDURAL HISTORY

The Circuit Court of the First Circuit sealed records relating to a September 9, 2016 criminal-case proceeding and later denied Grube's motion to unseal. The circuit court required Grube to retain counsel based on its view that he was representing Honolulu Civil Beat. Grube filed an original petition in the Hawai'i Supreme Court, which granted mandamus relief, granted prohibition in part, and denied prohibition in part.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The circuit court was ordered to unseal the documents ten calendar days after filing of the opinion unless the State timely requested a hearing and presented additional evidence showing that all or part of the documents must remain sealed to serve a governmental interest sufficiently weighty to overcome the constitutional right of access. If a hearing was requested, the circuit court was ordered to promptly hold it and prepare specific findings satisfying the substantive requirements described in the opinion. Grube was permitted to represent his own interests in further proceedings. Prohibition was granted in part as to self-representation and denied in part as unnecessary insofar as it sought to prohibit enforcement of the sealing order.

CASES CITED

- State v. Akana, 68 Haw. 164, 165, 706 P.2d 1300, 1302 (1985)
- Oahu Publications Inc. v. Ahn, 133 Hawai'i 482, 331 P.3d 460 (2014)
- In re The Herald Co., 734 F.2d 93 (2d Cir. 1984)
- Gannett Pacific Corp. v. Richardson, 59 Haw. 224, 580 P.2d 49 (1978)
- Globe Newspaper Co. v. Superior Court for the County of Norfolk, 457 U.S. 596 (1982)
- Territory v. Scharsch, 25 Haw. 429 (1920)
- United States v. Brooklier, 685 F.2d 1162 (9th Cir. 1982)
- Phoenix Newspapers, Inc. v. U.S. District Court for District of Arizona, 156 F.3d 940 (9th Cir. 1998)
- United States v. Criden, 675 F.2d 550 (3d Cir. 1982)
- Moana v. Wong, 141 Hawai'i 100, 405 P.3d 536 (2017)
- Press-Enterprise Co. v. Superior Court of California, Riverside County, 478 U.S. 1 (1986)
- In re McClatchy Newspapers, Inc., 288 F.3d 369 (9th Cir. 2002)

- Landmark Communications, Inc. v. Virginia, 435 U.S. 829 (1978)
- Oregonian Publishing Co. v. U.S. District Court for District of Oregon, 920 F.2d 1462 (9th Cir. 1990)
- In re Knight Publishing Co., 743 F.2d 231 (4th Cir. 1984)
- State v. Hutch, 75 Haw. 307, 861 P.2d 11 (1993)
- In re Ellis, 53 Haw. 23, 487 P.2d 286 (1971)
- Kema v. Gaddis, 91 Hawai‘i 200, 982 P.2d 334 (1999)
- Breiner v. Takao, 73 Haw. 499, 835 P.2d 637 (1992)
- CBS, Inc. v. U.S. District Court for the Central District of California, 765 F.2d 823 (9th Cir. 1985)
- Times Mirror Co. v. United States, 873 F.2d 1210 (9th Cir. 1989)
- In re Macon Telegraph Publishing Co., 900 F. Supp. 489 (M.D. Ga. 1995)
- In re Search Warrant for Secretarial Area Outside Office of Gunn, 855 F.2d 569 (8th Cir. 1988)
- Oahu Publications Inc. v. Takase, 139 Hawai‘i 236, 386 P.3d 873 (2016)

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