

NOS. 23278 and 23333

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
GREGORIO MARBOU, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 99-0652)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Lim and Foley, JJ.)

Defendant-Appellant Gregorio Marbou (Marbou) appeals from the Judgment entered in the Circuit Court of the First Circuit (circuit court) on March 9, 2000. Following a bench trial,¹ Marbou was convicted of Count IV:² Violation of an Order for Protection, in violation of Hawaii Revised Statutes (HRS) §§ 586-5.5 (Supp. 1998) and 586-11 (1993).

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Marbou's points of error as follows:

(1) Marbou argues that insufficient evidence supported the circuit court's finding that Marbou violated the Order for Protection (Order) issued, pursuant to HRS Chapter 586, on

¹The Honorable Reynaldo D. Gaulty presided.

²Marbou was found not guilty of Counts I and II (Intimidating a Witness, HRS § 710-1071(1)(a)); Count III (Intimidating a Witness, HRS § 710-1071(1)(a)) was dismissed at the conclusion of the State's case.

December 16, 1998 by the Family Court of the First Circuit in FC-DA No. 98-1829. Marbou's argument has no merit. Substantial credible evidence established that Marbou intentionally or knowingly walked within 100 feet of Humie Iekar to make statements to Marileen Hashida and thus violated the Order. Considering this evidence in the strongest light for the State, we conclude there is substantial evidence to support the conclusion of the trier of fact. State v. Richie, 88 Hawai'i 19, 33, 960 P.2d 1227, 1241 (1998). The circuit court found the testimony of the complaining witness more credible than Marbou's testimony. "It is well-settled that an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the province of the trier of fact." State v. Jenkins, 93 Hawai'i 87, 101, 997 P.2d 13, 27 (2000) (internal quotation marks and brackets omitted) (quoting State v. Mattiello, 90 Hawai'i 255, 259, 978 P.2d 693, 697 (1999)).

(2) Marbou argues that the circuit court denied his right to a speedy trial and violated Hawai'i Rules of Penal Procedure (HRPP) Rule 48. Marbou's argument has no merit because the circuit court properly excluded periods of time caused by Marbou's motions in its computation for trial commencement pursuant to HRPP Rule 48. State v. Samonte, 83 Hawai'i 507, 928 P.2d 1 (1996).

(3) Marbou argues his right to effective assistance of counsel was violated. Marbou fails to satisfy the burden of establishing ineffective assistance of counsel:

1) that there were specific errors or omissions reflecting counsel's lack of skill, judgment, or diligence; and 2) that such errors or omissions resulted in either the withdrawal or substantial impairment of a potentially meritorious defense.

Barnett v. State, 91 Hawai'i 20, 27, 979 P.2d 1046, 1053 (1999) (quoting State v. Fukusaku, 85 Hawai'i 462, 480, 946 P.2d 32, 50 (1997)).

Therefore,

IT IS HEREBY ORDERED that the March 9, 2000 Judgment of the circuit court is affirmed.

DATED: Honolulu, Hawai'i, May 13, 2002.

On the briefs:

Gregorio Marbou,
defendant-appellant pro se.

Chief Judge

James M. Anderson,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.

Associate Judge

Associate Judge