

NO. 25468

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
RONALD GARANIA, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIFTH CIRCUIT
(FC-CR. NO. 01-1-0240)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Ronald Garania (Garania) appeals the Judgment filed on October 22, 2002 in the Family Court of the Fifth Circuit (family court).¹ After a jury-waived trial, Garania was found guilty of "Abuse of Family and Household Members," in violation of Hawaii Revised Statutes (HRS) § 709-906 (Supp. 2001),² and sentenced to thirty days of imprisonment and

^{1/} The Honorable Calvin K. Murashige presided.

^{2/} Hawaii Revised Statutes (HRS) § 709-906 (Supp. 2001) provides, in relevant part, as follows:

§709-906 Abuse of family or household members; penalty.

(1) It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member or to refuse compliance with the lawful order of a police officer under subsection (4). The police, in investigating any complaint of abuse of a family or household member, upon request, may transport the abused person to a hospital or safe shelter.

For the purposes of this section, "family or household member" means spouses or reciprocal beneficiaries, former spouses or reciprocal beneficiaries, persons who have a child in common, parents, children, persons related by consanguinity, and persons jointly residing or formerly residing in the same dwelling unit.

(2) Any police officer, with or without a warrant, may arrest a person if the officer has reasonable grounds to believe

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that the person is physically abusing, or has physically abused, a family or household member and that the person arrested is guilty thereof.

(3) A police officer who has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member shall prepare a written report.

(4) Any police officer, with or without a warrant, may take the following course of action where the officer has reasonable grounds to believe that there was physical abuse or harm inflicted by one person upon a family or household member, regardless of whether the physical abuse or harm occurred in the officer's presence:

- (a) The police officer may make reasonable inquiry of the family or household member upon whom the officer believes physical abuse or harm has been inflicted and other witnesses as there may be;
- (b) Where the police officer has reasonable grounds to believe that there is probable danger of further physical abuse or harm being inflicted by one person upon a family or household member, the police officer lawfully may order the person to leave the premises for a period of separation of twenty-four hours, during which time the person shall not initiate any contact, either by telephone or in person, with the family or household member; provided that the person is allowed to enter the premises with police escort to collect any necessary personal effects[.]

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(5) Abuse of a family or household member and refusal to comply with the lawful order of a police officer under subsection (4) are misdemeanors and the person shall be sentenced as follows:

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- (b) For a second offense and any other subsequent offense that occurs within one year of the previous offense, the person shall be termed a "repeat offender" and serve a minimum jail sentence of thirty days.

Upon conviction and sentencing of the defendant, the court shall order that the defendant immediately be incarcerated to serve the mandatory minimum sentence imposed; provided that the defendant may be admitted to bail pending appeal pursuant to chapter 804. The court may stay the imposition of the sentence if special circumstances exist.

(6) Whenever a court sentences a person pursuant to subsection (5), it also shall require that the offender undergo any available domestic violence intervention programs ordered by the court. However, the court may suspend any portion of a jail

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two years of probation and ordered to complete the Alternatives to Violence Program.

On appeal, Garania contends that (1) when the family court granted three continuances requested by his public defender, it erred by allowing his public defender to violate Garania's right to a speedy trial under Hawai'i Rules of Penal Procedure (HRPP) Rule 48 and the United States and Hawai'i Constitutions; and (2) Garania's public defender rendered ineffective assistance of counsel by failing to fully investigate and call witnesses to testify, thus denying Garania a meritorious defense.

Upon careful review of the record and the briefs submitted by the parties, we hold:

(1) Garania was not denied his right to a speedy trial under HRPP Rule 48, the United States Constitution, or the Hawai'i Constitution. Given exclusions under HRPP Rule 48(c), Garania's trial commenced within 180 days of his arrest. Garania's speedy trial claim also fails under the *Barker v. Wingo*

^{2/}(...continued)
sentence, except for the mandatory sentences under subsection 5(a) and (b), upon the condition that the defendant remain arrest-free and conviction-free or complete court-ordered intervention.

. . . .

(14) When a person is ordered by the court to undergo any domestic violence intervention, that person shall provide adequate proof of compliance with the court's order.

analysis. State v. Libero, 103 Hawai'i 490, 503, 83 P.3d 753, 766 (App. 2003), cert. denied, 103 Hawai'i 479, 83 P.3d 742 (2004); and

(2) Garania fails to establish a claim for ineffective assistance of counsel. "Ineffective assistance of counsel claims based on the failure to obtain witnesses must be supported by affidavits or sworn statements describing the testimony of the proffered witnesses." State v. Richie, 88 Hawai'i 19, 39, 960 P.2d 1227, 1247 (1998). Garania has not provided any reliable evidence indicating what the witnesses would have testified to and, therefore, has no claim. Garania's public defender cross-examined the State's witnesses and called one witness for the defense. The decision not to call any other witnesses appears to have been a strategic decision and will not be second-guessed on appeal. Richie, 88 Hawai'i at 40, 960 P.2d at 1248. Garania fails to show any "specific errors or omissions reflecting counsel's lack of skill, judgment, or diligence" nor that "such errors or omissions resulted in either the withdrawal or substantial impairment of a potentially meritorious defense." State v. Jones, 96 Hawai'i 161, 166, 29 P.3d 351, 356 (2001) (internal quotation marks and citation omitted).

Therefore,

IT IS HEREBY ORDERED that the Judgment filed on October 22, 2002 in the Family Court of the Fifth Circuit is affirmed.

DATED: Honolulu, Hawai'i, October 12, 2004.

On the briefs:

Caren Dennemeyer
for defendant-appellant.

Chief Judge

Tracy Murakami,
Deputy Prosecuting Attorney,
County of Kaua'i,
for plaintiff-appellee.

Associate Judge

Associate Judge