

NOT FOR PUBLICATION

NO. 24571 & 24572

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
DON VELASCO, Defendant-Appellant

APPEAL FROM THE SECOND CIRCUIT COURT
(CR. NOS. 97-0038(2) & 97-0405(2))

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Don Velasco (Velasco) appeals from two orders entered by the Circuit Court of the Second Circuit¹ (circuit court): (1) "Order Denying Defendant Velasco's Motion to Dismiss OSC [Order to Show Cause], or in the Alternative, Motion to Reduce Sentence, Filed April 5, 2001," entered on August 22, 2001 in Cr. No. 97-0038(2); and (2) "Order Denying Defendant Velasco's Motion to Dismiss OSC, or in the Alternative, Motion to Reduce Sentence, Filed April 5, 2001," entered on August 21, 2001 in Cr. No. 97-0405(2).

On appeal, Velasco contends the circuit court erred (1) when it failed to dismiss the OSC on the grounds of lack of personal and subject-matter jurisdiction and (2) when it precluded Velasco from sitting next to his defense counsel during the evidentiary hearings, thereby denying him his constitutional

¹ The Honorable Shackley F. Raffetto presided.

rights to counsel, equal protection, and due process of law. We affirm.

The circuit court had subject matter jurisdiction to revoke probation. Hawaii Revised Statutes § 706-625 (Supp. 2001) (Revocation, modification of probation conditions). Additionally, the circuit court had personal jurisdiction to revoke probation. The court's jurisdiction cannot be challenged "on the ground that physical custody of [Velasco] was obtained in an unlawful manner." People v. Burrill, 214 N.W.2d 823, 828 (Mich. 1974) (citing Frisbie v. Collins, 342 U.S. 519, 522, 72 S. Ct. 509, 511-12 (1952)).

Velasco contends he was denied his constitutional rights to counsel, equal protection, and due process of law when he was not allowed to sit next to his counsel at the hearings on his motions to dismiss. Absent reasons of security or practicality, "a defendant has the right to be seated at the same table as his attorney." United States v. Sorrentino, 726 F.2d 876, 887 (1st Cir. 1984). The circuit court did not adequately articulate the reasons for refusing Velasco's request to sit at the counsel table, but this error was harmless because there was "no evidence that the seating arrangement prevented or unduly hindered communication between [Velasco] and his counsel." Id.

Therefore, we affirm the (1) "Order Denying Defendant Velasco's Motion to Dismiss OSC, or in the Alternative, Motion to

Reduce Sentence, Filed April 5, 2001," entered on August 22, 2001 in Cr. No. 97-0038(2); and (2) "Order Denying Defendant Velasco's Motion to Dismiss OSC, or in the Alternative, Motion to Reduce Sentence, Filed April 5, 2001," entered on August 21, 2001 in Cr. No. 97-0405(2) in the Circuit Court of the Second Circuit.

DATED: Honolulu, Hawai'i, February 14, 2005.

On the briefs:

Hayden Aluli
for defendant-appellant.

Arleen Y. Watanabe,
Deputy Prosecuting Attorney,
County of Maui,
for plaintiff-appellee.

Chief Judge

Associate Judge

Associate Judge