

NO. 26087

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
QUINTIN D'AGIRBAUD, Defendant-Appellant

STATE OF HAWAII
COURT OF APPEALS
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APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NOS. 02-1-0939, 02-1-1336, & 02-1-1558)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Quintin D'Agirbaud (D'Agirbaud) appeals from the Amended Judgments filed on November 19, 2003 in the Circuit Court of the First Circuit (circuit court).^{1/} D'Agirbaud was charged in three separate cases (Cr. Nos. 02-1-0939 (0939), 02-1-1336 (1336), and 02-1-1558 (1558)) with six counts of Forgery in the Second Degree in violation of Hawaii Revised Statutes (HRS) § 708-852 (Supp. 2004)^{2/} and two counts of Theft in the Second Degree in violation of HRS § 708-831(1)(b)

^{1/} The Honorable Marie N. Milks presided.

^{2/} Hawaii Revised Statutes (HRS) § 708-852 (Supp. 2004) provides:

§708-852 Forgery in the second degree. (1) A person commits the offense of forgery in the second degree if, with intent to defraud, the person falsely makes, completes, endorses, or alters a written instrument, or utters a forged instrument, or fraudulently encodes the magnetic ink character recognition numbers, which is or purports to be, or which is calculated to become or to represent if completed, a deed, will, codicil, contract, assignment, commercial instrument, or other instrument which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status.

(2) Forgery in the second degree is a class C felony.

(1993 & Supp. 2004).^{3/} The cases were consolidated on August 22, 2002 for trial, and a jury found D'Agirbaud guilty as charged on all counts.

The State filed motions for extended terms of imprisonment pursuant to HRS §§ 706-661 (Supp. 2004) and 706-662(1) and (4)(a) (Supp. 2004), sentencing as a repeat offender pursuant to HRS § 706-606.5 (Supp. 2004), and consecutive terms of imprisonment pursuant to HRS §§ 706-668.5 (1993) and 706-606 (1993). The circuit court granted the State's motions and sentenced D'Agirbaud as follows:

0939: four concurrent ten-year terms of imprisonment, with four concurrent mandatory minimum terms of imprisonment of one year and eight months as a repeat offender;

1336: three concurrent ten-year terms of imprisonment to run consecutive to the sentence imposed in 0939, with three concurrent mandatory minimum terms of imprisonment of one year and eight months to run

^{3/} HRS § 708-831 (1993 & Supp. 2004) provides in relevant part:

§708-831 Theft in the second degree. (1) A person commits the offense of theft in the second degree if the person commits theft:

.

(b) Of property or services the value of which exceeds \$300[.]

.

(2) Theft in the second degree is a class C felony.

consecutive to the mandatory minimums imposed in 0939;
and

1558: one ten-year term of imprisonment to run
consecutive to the sentence imposed in 1336, with a
mandatory minimum term of imprisonment of one year and
eight months to run consecutive to the mandatory
minimum imposed in 1336.

On appeal,^{4/} D'Agirbaud contends the circuit court (1)
erred in denying his motion to disqualify the judge, (2) abused
its discretion in "disallowing evidence of bias and motive
necessary for impeachment purposes to explain the overall
employment relationship between [D'Agirbaud] and the State's key
witness," and (3) was "statutorily barred from sentencing
[D'Agirbaud] to consecutive mandatory minimum terms of
imprisonment under HRS § 706-606.5."

On February 2, 2005, this court granted D'Agirbaud's
motion to reopen briefing. D'Agirbaud filed a supplement to his
opening brief contending that, based on the United States Supreme
Court's decision in Apprendi v. New Jersey, 530 U.S. 466, 120 S.
Ct. 2348 (2000), the circuit court erred in imposing on him an

^{4/} Defendant-Appellant Quintin D'Agirbaud's opening brief fails to
comply with Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(3) in
failing to include "record references supporting each statement of fact or
mention of court . . . proceedings." D'Agirbaud's counsel is warned that
future non-compliance with HRAP 28 may result in sanctions against her.

extended sentence. The State filed a letter brief disputing this contention.

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

(1) The circuit court did not abuse its discretion in denying D'Agirbaud's Motion to Disqualify Judge. D'Agirbaud has not shown that the trial judge had a personal bias towards him or that his trial was unfair. Aga v. Hundahl, 78 Hawai'i 230, 242, 891 P.2d 1022, 1034 (1995).

(2) The circuit court did not err in not admitting evidence of prior bad acts to impeach the State's key witness because the court did not clearly exceed "the bounds of reason or disregard[] rules or principles of law or practice to the substantial detriment of a party litigant." State v. Crisostomo, 94 Hawai'i 282, 287, 12 P.3d 873, 878 (2000) (internal quotation marks and citations omitted).

(3) The circuit court did not abuse its discretion in sentencing D'Agirbaud to consecutive mandatory minimum terms of imprisonment under HRS § 706-606.5. State v. Gaylord, 78 Hawai'i 127, 144, 890 P.2d 1167, 1184 (1995).

(4) D'Agirbaud's extended terms of imprisonment were not illegal sentences under Apprendi or its progeny. State v. Rivera, 106 Hawai'i 146, 102 P.3d 1044 (2004).

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Therefore,

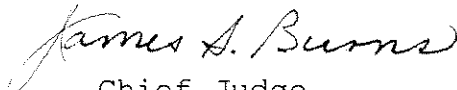
IT IS HEREBY ORDERED that the Amended Judgments filed on November 19, 2003 in Cr. Nos. 02-1-0939, 02-1-1336, and 02-1-1558 in the Circuit Court of the First Circuit Court are affirmed.


DATED: Honolulu, Hawai'i, March 21, 2005.

On the briefs:

Mary Ann Barnard
for defendant-appellant.

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


Chief Judge


Associate Judge


Associate Judge