

NO. 26445

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
KENNETH WAYNE PUNI, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 03-1-0002)

FILED
CLERK, APPELLATE COURTS
STATE OF HAWAI'I
E.H. RICHMOND

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FILED

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Kenneth Wayne Puni (Puni) appeals from the Order of Resentencing/Revocation of Probation filed on February 10, 2004 in the Circuit Court of the First Circuit (circuit court).^{1/} Pursuant to a plea agreement, Puni had pled guilty to two counts of Sexual Assault in the Third Degree in violation of Hawaii Revised Statutes (HRS) § 707-732(1)(b) (Supp. 2004).^{2/} In the Order of Resentencing/Revocation of Probation, the circuit court revoked Puni's probation and imposed five-year sentences of imprisonment for each count.

Puni contends on appeal that the circuit court abused

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

^{2/} Hawaii Revised Statutes (HRS) § 707-732 (Supp. 2004) states in relevant part:

§707-732 Sexual assault in the third degree. (1) A person commits the offense of sexual assault in the third degree if:

.

(b) The person knowingly subjects to sexual contact another person who is less than fourteen years old or causes such person to have sexual contact with the person[.]

.

(2) Sexual assault in the third degree is a class C felony.

its discretion by (1) holding that Puni inexcusably failed to comply with a substantial condition of his probation and (2) resentencing Puni to five-year terms of imprisonment for each offense.

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

(1) The circuit court's findings of fact that Puni failed to report to his probation officer and to obtain sex offender treatment, which were substantial requirements imposed as conditions of probation, were not clearly erroneous, and the circuit court did not err by concluding that Puni's failure to comply with either of these conditions was inexcusable. State v. Reyes, 93 Hawai'i 321, 327, 2 P.3d 725, 731 (App. 2000); and

(2) The circuit court did not commit plain and manifest abuse of discretion by resentencing Puni to terms of imprisonment pursuant to HRS § 706-625(3) (Supp. 2004).^{3/} State v. Tauiliili, 96 Hawai'i 195, 198, 29 P.3d 914, 917 (2001).

^{3/} HRS § 706-625 (Supp. 2004) provides in relevant part:

§706-625 Revocation, modification of probation conditions.

. . . .

(3) The court shall revoke probation if the defendant has inexcusably failed to comply with a substantial requirement imposed as a condition of the order[.]

. . . .

(5) When the court revokes probation, it may impose on the defendant any sentence that might have been imposed originally for the crime of which the defendant was convicted.

(Emphasis added.)

Therefore,

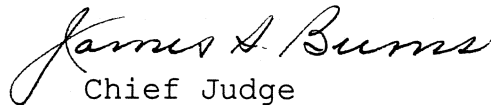
IT IS HEREBY ORDERED that the Order of Resentencing/
Revocation of Probation filed on February 10, 2004 in the Circuit
Court of the First Circuit is affirmed.

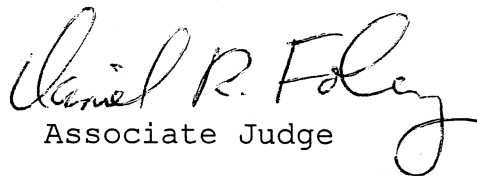
DATED: Honolulu, Hawai'i, June 17, 2005.


On the briefs:

Shawn A. Luiz
for defendant-appellant.

Ryan Yeh,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.


Chief Judge


Associate Judge


Associate Judge