

NOT FOR PUBLICATION

NO. 25753

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
WARNE YOUNG, Defendant-Appellant

FILED
2005 JUN 29 AM 9:40
EVA RIMANDO
CLERK APPELLATE COURTS
STATE OF HAWAI'I

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT,
NORTH AND SOUTH HILO DIVISION
(Citation No. 1771983MH)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Warne Young (Young) appeals from the judgment orally pronounced by the District Court of the Third Circuit (the district court)^{1/} on March 11, 2003 and memorialized in a written Judgment filed on October 3, 2003. The Judgment found Young "guilty" of expired safety check, in violation of Hawaii Revised Statutes (HRS) § 286-25 (1993).

Young's sole contention on appeal is that the district court erred by failing to provide him with "notice or advice that he had the right to representation by counsel" pursuant to HRS § 802-2 (1993). We disagree with Young.

Article I, section 14 of the Hawai'i Constitution provides, in pertinent part: "The State shall provide counsel for an indigent defendant charged with an offense punishable by imprisonment." The right to representation by public defender or

^{1/} The Honorable Sandra P. Schutte (now Sandra P. Song) presided.

NOT FOR PUBLICATION

other appointed counsel is set forth in HRS § 802-1 (1993), which provides, in relevant part, as follows:

Right to representation by public defender or other appointed counsel. Any indigent person who is (1) arrested for, charged with or convicted of an offense or offenses punishable by confinement in jail or prison or for which such person may be or is subject to the provisions of chapter 571; or (2) threatened by confinement, against the indigent person's will, in any psychiatric or other mental institution or facility; or (3) the subject of a petition for involuntary outpatient treatment under chapter 334 shall be entitled to be represented by a public defender. If, however, conflicting interests exist, or if the public defender for any other reason is unable to act, or if the interests of justice require, the court may appoint other counsel.

HRS § 802-1 (1993) (emphases added). Furthermore, HRS § 802-2 (1993) requires the court to notify a defendant of this right to legal representation only in criminal cases or proceedings:

Notification of right to representation. In every criminal case or proceeding in which a person entitled by law to representation by counsel appears without counsel, the judge shall advise the person of the person's right to representation by counsel and also that if the person is financially unable to obtain counsel, the court may appoint one at the cost to the State.

(Emphasis added.)

HRS § 286-25, which Young was "found guilty" of violating, provides as follows:

Operation of a vehicle without a certificate of inspection. Whoever operates, permits the operation of, causes to be operated, or parks any vehicle on a public highway without a current official certificate of inspection, issued under section 286-26, shall be fined not more than \$100.

(Emphasis added.)

Pursuant to HRS § 291D-2 (1993), "all violations of statutes, ordinances, or rules relating to traffic movement and control, including parking, standing, equipment, and pedestrian offenses, for which the prescribed penalties do not include

NOT FOR PUBLICATION

imprisonment" constitute civil "traffic infractions" subject to the adjudication procedures set forth in HRS chapter 291D. See State v. Rees, slip op. at 18 (App. No. 26470, May 27, 2005). Since the penalty for an HRS § 286-25 violation does not include imprisonment, the HRS § 286-25 offense constitutes a civil traffic infraction and not a criminal offense. Therefore, HRS § 802-2 was not applicable to Young, and the district court had no duty to notify Young that he had a right to legal representation.


We observe, however, that the district court improperly found Young "guilty"^{2/} of violating HRS § 286-25. We therefore vacate the Judgment below and remand this case for entry of a replacement judgment in favor of Plaintiff-Appellee State of Hawai'i as to the traffic infraction of expired safety check.

DATED: Honolulu, Hawai'i, June 29, 2005.

On the briefs:

Warne Keahi Young,
defendant-appellant, pro se.

Glenn H. Shiigi, deputy
prosecuting attorney, County
of Hawai'i, for plaintiff-
appellee.

Corinne K. Watarelle

Craig W. Robinson

^{2/} For traffic infractions, we recommend that the district courts find a defendant "responsible" for, rather than "guilty" of, committing an infraction.