

NO. 25984

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
JOHN PHILLIP WORMAN, Defendant-Appellant

APPEAL FROM THE THIRD CIRCUIT COURT
(CR. NO. 01-1-0390)

NORMA T. YARA
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STATE OF HAWAII

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FILED

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant John Phillip Worman (Worman)

appeals from the Judgment filed July 3, 2003 in the Circuit Court of the Third Circuit (circuit court).^{1/} Worman pled guilty to three counts of Sexual Assault in the Third Degree in violation of Hawaii Revised Statutes (HRS) § 707-732(1)(b) (Supp. 2004). Worman asked the circuit court to apply HRS § 706-606(1) (1993)^{2/}

^{1/} The Honorable Greg K. Nakamura presided.

^{2/} Hawaii Revised Statutes (HRS) § 706-606 (1993) provides in relevant part:

§706-606 Factors to be considered in imposing a sentence.
The court, in determining the particular sentence to be imposed, shall consider:

- (1) The nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) The need for the sentence imposed:
 - (a) To reflect the seriousness of the offense, to promote respect for law, and to provide just punishment for the offense;
 - (b) To afford adequate deterrence to criminal conduct;
 - (c) To protect the public from further crimes of the defendant; and
 - (d) To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(continued...)

and sentence him to a civil commitment under HRS § 706-607 (1993). The circuit court denied his request and sentenced Worman to five years of imprisonment for each count, to run concurrently with each other and with his sentence in Cr. No. 01-1-374 (criminal trespass).

On appeal, Worman contends the circuit court erred by (1) denying his motion for further mental evaluations; (2) imposing a sentence that was constitutionally cruel and unusual "in light of Worman's physical and mental ailments"; and (3) permitting his third and fourth court-appointed counsel to provide ineffective assistance of counsel by allowing them to withdraw at critical stages of the case.

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 Worman further mental examinations to determine whether he should be civilly committed under HRS § 706-607.^{2/} Section

^{2/}(...continued)

(3) The kinds of sentences available[.]

^{3/} HRS § 706-607 (1993) provides:

HRS §706-607 Civil commitment in lieu of prosecution or of sentence. (1) When a person prosecuted for a class C felony, misdemeanor, or petty misdemeanor is a chronic alcoholic, narcotic addict, or person suffering from mental abnormality and the person is subject by law to involuntary hospitalization for medical, psychiatric, or other rehabilitative treatment, the court may order such hospitalization and dismiss the prosecution. The order of involuntary hospitalization may be made after conviction, in which event the court may set aside the verdict or judgment of conviction and dismiss the prosecution.

(continued...)

706-607 did not require the circuit court to order further mental evaluations of Worman.

(2) Worman's sentence was not cruel and unusual:

The standard by which punishment is to be judged under the "cruel and unusual" punishment provisions of both the United States and Hawaii Constitutions is whether, in the light of developing concepts of decency and fairness, the prescribed punishment is so disproportionate to the conduct proscribed and is of such duration as to shock the conscience of reasonable persons or to outrage the moral sense of the community.

State v. Solomon, 107 Hawai'i 117, 131, 111 P.3d 12, 26 (2005)

(internal quotation marks and brackets omitted) (quoting State v. Jenkins, 93 Hawai'i 87, 114, 997 P.2d 13, 40 (2000)). The punishment prescribed does not appear to be clearly and manifestly cruel and unusual. Jenkins, 93 Hawai'i at 114, 997 P.2d at 40.

(3) The circuit court did not abuse its discretion in allowing Worman's attorneys to withdraw because Worman fails to show that he was prejudiced and "1) that there were specific errors or omissions reflecting counsel's lack of skill, judgment, or diligence; and 2) that such errors or omissions resulted in either the withdrawal or substantial impairment of a potentially meritorious defense." State v. Wakisaka, 102 Hawai'i 504, 514, 78 P.3d 317, 327 (internal quotation marks and citation omitted).

²/(...continued)

(2) The court shall not make an order under subsection (1) unless it is of the view that it will substantially further the rehabilitation of the defendant and will not jeopardize the protection of the public.

Therefore,

IT IS HEREBY ORDERED that the Judgment filed on July 3, 2003 in the Circuit Court of the Third Circuit is affirmed.

DATED: Honolulu, Hawai'i, July 6, 2005.

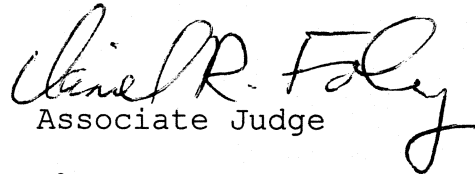
On the briefs:

Mary Ann Barnard
for defendant-appellant.

Kevin S. Hashizaki,
Deputy Prosecuting Attorney,
County of Hawai'i,
for plaintiff-appellee.



Acting Chief Judge



Associate Judge



Associate Judge