

NOT FOR PUBLICATION

NO. 25895

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

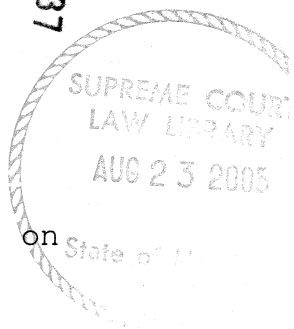
STATE OF HAWAI'I, Plaintiff-Appellee, v.
VICTOR FAAGAU, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 01-1-2819)

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED



SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Victor Fa'agau (Faagau), born on August 28, 1985, appeals from (1) the Findings of Fact and Conclusions of Law and Order Granting Waiver of Jurisdiction entered by the Family Court of the First Circuit¹ on January 29, 2002, waiving the family court's original exclusive jurisdiction over him,² and (2) the Judgment entered by the Circuit Court of the First Circuit³ on April 22, 2003, finding him guilty of

¹ The Honorable Frances Q. F. Wong presided.

² Hawaii Revised Statutes (HRS) § 571-22(a) (Supp. 2004) permits orders waiving jurisdiction over persons charged with committing what would be a felony if committed by an adult if committed on or after the person's sixteenth birthday. In contrast, HRS 571-22(d) (Supp. 2004) states:

The court may waive jurisdiction and order a minor or adult held for criminal proceedings if, after a full investigation and hearing, the court finds that:

- (1) The person during the person's minority is alleged to have committed an act that would constitute murder in the first degree or second degree or attempted murder in the first degree or second degree if committed by an adult; and
- (2) There is no evidence the person is committable to an institution for the mentally defective or retarded or the mentally ill.

HRS § 571-22.5 (1993) states that "An order waiving jurisdiction shall not be appealable as a final order, but may only be appealable in conjunction with an appeal of all other issues after a trial on the charge against such minor or adult."

³ The Honorable Sandra A. Simms presided.

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Manslaughter, Hawaii Revised Statutes (HRS) § 707-702 (Supp. 2004), a class A felony, HRS § 707-702(3), and sentencing him to a twenty (20) year indeterminate term of imprisonment.

This is a case where, on the morning of July 14, 2001, the lifeless body of William Van Winkle (Van Winkle), age 35, was found on a basketball court at the Wai'anae Regional District Park (District Park). After performing an autopsy that same day, the chief medical examiner determined that Van Winkle "died as a result of severe injuries to the head and brain sustained as a result of multiple blunt impacts to the face and head area."

Subsequently, Faagau and four other individuals were arrested and charged with the murder of Van Winkle. On October 2, 2001, the State of Hawai'i (the State) filed an amended petition in circuit court charging Faagau with murder in the second degree, and an amended petition in family court requesting waiver of jurisdiction over Faagau pursuant to HRS § 571-22(d) (Supp. 2004).

Following an evidentiary hearing on December 10, 2001, the family court orally granted the petition for waiver of jurisdiction over Faagau. In its January 29, 2002 Findings of Fact and Conclusions of Law and Order Granting Waiver of Jurisdiction, the family court did so in writing.

Faagau waived his right to a jury trial and testified. On December 6, 2002, the court orally found Faagau guilty of the included offense of manslaughter. Faagau requested sentencing under the Young Adult Defendant Statute, HRS § 706-667 (Supp.

2004),⁴ which calls for a maximum eight year term of imprisonment for a class A felony, or for a term of probation. The State opposed such sentencing and filed a motion for an extended (indeterminate life) term pursuant to HRS §§ 706-661 and -662(3) (Supp. 2004)⁵.

The court denied the State's motion for an extended (indeterminate life) term and Faagau's request for probation or for an indeterminate eight year term of imprisonment as a young

⁴ HRS § 706-667 (Supp. 2004) states, in relevant part, as follows:

Young adult defendants. (1) Defined: A young adult defendant is a person convicted of a crime who, at the time of sentencing, is less than twenty two years of age and who has not been previously convicted of a felony as an adult or adjudicated as a juvenile for an offense that would have constituted a felony had the young adult defendant been an adult.

. . . .

(3) Special term. A young adult defendant convicted of a felony may, in lieu of any other sentence of imprisonment authorized by this chapter, be sentenced to a special indeterminate term of imprisonment if the court is of the opinion that such special term is adequate for the young adult defendant's correction and rehabilitation and will not jeopardize the protection of the public. When ordering a special indeterminate term of imprisonment, the court shall impose the maximum length of imprisonment which shall be eight years for a class A felony . . . This section shall not apply to the offenses of murder or attempted murder.

⁵ HRS § 706-662 (Supp. 2004) states, in relevant part, as follows:

Criteria for extended terms of imprisonment. A convicted defendant may be subject to an extended term of imprisonment under section 706-661, if the convicted defendant satisfies one or more of the following criteria:

. . . .

(3) The defendant is a dangerous person whose imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless the defendant has been subjected to a psychiatric or psychological evaluation that documents a significant history of dangerousness to others resulting in criminally violent conduct, and this history makes the defendant a serious danger to others[.]

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adult defendant. The court sentenced Faagau to an indeterminate term of twenty years with credit for time served. Faagau filed a notice of appeal on June 18, 2003.

Faagau's first point of error is that the family court abused its discretion in waiving its jurisdiction over him. Faagau's second point of error is that the circuit court abused its discretion in denying his request to be sentenced as a young adult defendant. In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and upon carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that the January 29, 2002 Findings of Fact and Conclusions of Law and Order Granting Waiver of Jurisdiction entered in the Family Court of the First Circuit, and the April 22, 2003 Judgment entered in the Circuit Court of the First Circuit are affirmed.

DATED: Honolulu, Hawai'i, August 23, 2005.

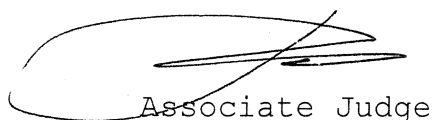
On the briefs:

Jacob M. Merrill
for Defendant-Appellant

Daniel Shimizu,
Deputy Prosecuting Attorney,
City & County of Honolulu,
for Plaintiff-Appellee


Chief Judge


Associate Judge


Associate Judge