

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

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STATE OF HAWAI'I, Plaintiff-Appellee, v.
ERIC KANOA SHANNON, Defendant-Appellant

NO. 27919

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(HPD Criminal No. 04447936)

SEPTEMBER 28, 2007

FOLEY, PRESIDING JUDGE, AND FUJISE, J. ;
AND NAKAMURA, J., DISSENTING

OPINION OF THE COURT BY FOLEY, J.

Defendant-Appellant Eric Kanoa Shannon (Shannon) appeals from the Judgment filed on April 6, 2006 in the District Court of the First Circuit, Kaneohe Division (district court).^{1/}

On appeal, Shannon argues that the district court (1) lacked jurisdiction to set aside his Deferred Acceptance of Guilty Plea (DAG plea), (2) committed reversible error when it admitted a hearsay report from Adult Client Services, (3) committed reversible error when it set aside his DAG plea without any proof that the conditions of deferral had been signed by him, (4) lacked statutory authority to impose a DAG plea requirement that he remain arrest-free, (5) abused its discretion when it refused to convert his 40 hours of community service to a fine,

^{1/} Per diem District Court Judge T. David Woo, Jr. presided.

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and (6) abused its discretion when it refused to continue the hearing on the State's motion to set aside Shannon's DAG plea to afford defense counsel additional time to obtain a transcript of Shannon's change of plea.

I.

On November 18, 2004, the State of Hawai'i (the State) orally arraigned and charged Shannon with one count of Criminal Trespass in the Second Degree, in violation of Hawaii Revised Statutes (HRS) § 708-814(1)(a) (Supp. 2004). Shannon entered a plea of not guilty. On February 11, 2005, Shannon changed his plea to guilty as charged and made an oral motion for a DAG plea. The district court granted Shannon's DAG plea motion, over the State's objection, with special conditions that he remain arrest- and conviction-free, perform 40 hours of community service work, and pay a \$25 fee. The district court scheduled a proof-of-compliance hearing for January 27, 2006.

On January 27, 2006, Shannon appeared before the district court, at which time the State made an oral motion to set aside Shannon's DAG plea. The district court referred Shannon to the Office of the Public Defender and continued the hearing. On March 24, 2006, Shannon failed to appear before the district court, and the court continued the hearing to April 6, 2006.

At the April 6, 2006 hearing, the State argued that Shannon had violated his special conditions by not remaining arrest-free^{2/} and not performing his 40 hours of community service work. Based on Shannon's failure to remain arrest-free

^{2/} On August 12, 2005, in the Circuit Court of the First Circuit (circuit court), Shannon was charged with Theft in the Fourth Degree and violating a temporary restraining order. On September 29, 2005, Shannon was charged with another count of Criminal Trespass in the Second Degree (which the district court dismissed with prejudice). And on February 3, 2006, Shannon was charged in the circuit court with Kidnapping and Terroristic Threatening.

and to complete his 40 hours of community service, the district court granted the State's motion to set aside Shannon's DAG plea. The district court filed its Judgment on April 6, 2006, and Shannon filed a Notice of Appeal on April 28, 2006.

II.

"[S]etting aside, or revoking, a DAG plea is properly within the discretion of the trial court. Generally, to constitute an abuse, it must appear that the court clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of the party litigant." State v. Kaufman, 92 Hawai'i 322, 326-27, 991 P.2d 832, 836-37 (2000) (internal quotation marks and citations omitted).

III.

The district court erred in setting aside Shannon's DAG plea because Shannon did not receive a written copy of the conditions of his DAG plea.

Shannon argues on appeal that this court must reverse because the State cannot proffer evidence that he signed and was provided a written copy of the conditions of his DAG plea, as mandated by HRS § 706-624(3) (1993). Section 706-624(3) provides that "[t]he defendant shall be given a written copy of any requirements imposed pursuant to this section, stated with sufficient specificity to enable the defendant to guide the defendant's self accordingly." (Emphasis added). Hawaii Revised Statutes § 853-1(b) (Supp. 2006)^{3/} incorporates and permits

^{3/} Hawaii Revised Statutes § 853-1(b) (Supp. 2006) provides in relevant part:

§853-1 Deferred acceptance of guilty plea or nolo contendere plea; discharge and dismissal, expungement of records.
.....

(b) The proceedings may be deferred upon any of the conditions specified by section 706-624.

courts accepting DAG pleas to impose any conditions enumerated in HRS § 706-624. State v. Dannenberg, 74 Haw. 75, 82, 837 P.2d 776, 779 (1992) ("HRS § 853-1(b) permits the court to impose any conditions on . . . DAG pleas enumerated in HRS § 706-624, the statute permitting the court to attach certain conditions to sentences of probation or the suspension of a sentence."); Kaufman, 92 Hawai'i at 329, 991 P.2d at 839 ("[B]y its express terms, the provisions of HRS § 706-624 are exported and incorporated by reference into HRS § 853-1.").

The State submits that Shannon's receipt of actual, oral notice at the February 11, 2005 hearing was sufficient.^{4/} However, the State's contention is wrong in light of this court's decision in State v. Lee, 10 Haw. App. 192, 862 P.2d 295 (1993). In Lee, this court reversed a circuit court's decision revoking Lee's probation for violation of a probation condition on the ground that Lee was never given a written copy of the conditions of his probation:

The intent [of HRS § 706-624] is to provide the defendant with notice of what is expected of him in a form which will not escape his memory.

The requirement of HRS § 706-624(3) that a defendant be provided with a written statement of the conditions of his probation also provides assurance that a defendant will know the exact terms and conditions of his probation before his probation can be revoked for failure to comply with the terms and conditions.

Id. at 198, 862 P.2d at 298.

In the instant case, there is no evidence in the record that Shannon received a written copy of his conditions. Shannon contends he did not receive a written copy, and the State does not contend otherwise.

^{4/} The February 11, 2005 district court calendar reflects that the district court orally apprised Shannon of his special conditions.

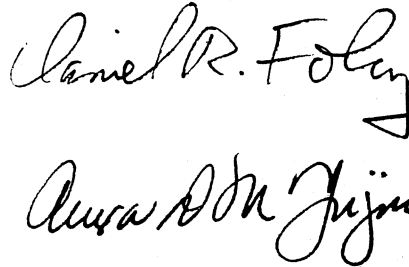
IV.

The Judgment filed on April 6, 2006 in the District Court of the First Circuit, Kaneohe Division, is vacated, and this case is remanded for further proceedings consistent with this opinion. Because we vacate and remand, Shannon's other points on appeal are moot.

On the briefs:

Hayden Aluli
for Defendant-Appellant.

Anne K. Clarkin,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.



Handwritten signatures of Daniel R. Foley and Anna D. Clarkin.