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NO. CAAP-13-0006008

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
IKAIKA AHINA, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE SECOND CIRCUIT
(FC-CR. NO. 12-1-0083(4))

SUMMARY DISPOSITION ORDER

(By: Nakamura, C.J., Fujise and Ginoza, JJ.)

Defendant-Appellant Ikaika Ahina (Ahina) appeals from the "Order Revoking Probation and Resentencing Defendant," entered on December 5, 2013, by the Family Court of the Second Circuit (Family Court).¹

On March 28, 2012, pursuant to a plea agreement, Ahina pleaded no contest to one count of Violation of an Order for Protection, in violation of Hawaii Revised Statutes (HRS) § 586-11 (2006 and Supp. 2015). Ahina was sentenced to probation for one year and two days of incarceration.

On December 5, 2013, after a hearing, the Family Court issued a written order revoking Ahina's probation and resentenced him to, *inter alia*, probation for one year with 60 days of incarceration as a special condition for failing to report to a probation officer as directed.

On appeal, Ahina claims the Family Court abused its discretion when it revoked his probation because there was insufficient evidence to demonstrate that he inexcusably failed

¹ The Honorable Richard T. Bissen, Jr. presided.

to comply with a substantial requirement of probation. Specifically, Ahina argues that the Family Court erred by finding that he intentionally failed to comply with the requirement that he report to his Probation Officer as ordered. Ahina also argues that his actions were not meant to circumvent the court's probation order when the goals of sentencing are considered.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Ahina's point of error as follows and affirm.

The court shall revoke probation if the defendant has inexcusably failed to comply with a substantial requirement imposed as a condition of the order or has been convicted of a felony. The court may revoke the suspension of sentence or probation if the defendant has been convicted of another crime other than a felony.

HRS § 706-625(3) (2014).

The term "inexcusably" in HRS § 706-625(3) means a wilful and deliberate attempt to circumvent the order of the court. State v. Villiarimo, 132 Hawai'i 209, 222, 320 P.3d 874, 887 (2014).

This standard requires both an intentional act on the part of the defendant ("willful"), and a deliberate attempt by him or her to circumvent the probation order, taking into consideration the significance of the defendant's action with respect to the court's order and goals of probation ("to circumvent the order of the court").

Id. (footnote omitted). Contrary to Ahina's claim, there was sufficient evidence that he acted intentionally and deliberately attempted to circumvent the probation order by violating the substantial condition of his probation that he "must report to a probation officer as directed by the court or the probation officer."

The facts are not in dispute. After learning from a Criminal Justice Information Systems inquiry that Ahina had been arrested for intoxication on August 14, 2012 and for theft and promoting a detrimental drug on August 28, 2012, Ahina met with his Probation Officer on September 7, 2012 when they discussed the arrests and more frequent meetings. Probation Officer then gave Ahina an appointment slip for September 26. During a conversation with his Probation Officer, Ahina's tone indicated

that he questioned why he needed to report to her. Ahina failed to report on September 26. His Probation Officer called him again and they agreed to another meeting. However, Ahina again failed to show up to that appointment. After his Probation Officer sent Ahina a letter, he called his Probation Officer, who agreed to a third meeting. The date and time was set based upon Ahina's availability because he was not working on the date of the appointment. However, Ahina again failed to report, failed to call his Probation Officer to inform her that he would not appear, and no other arrangement to report was made thereafter.

"Given the difficulty of proving the requisite state of mind by direct evidence[,] . . . 'proof by circumstantial evidence and reasonable inferences arising from circumstances surrounding the defendant's conduct is sufficient.'" State v. Stocker, 90 Hawai'i 85, 92, 976 P.2d 399, 406 (1999) (citation and brackets omitted). "Thus, the mind of an alleged offender may be read from his acts, conduct and inferences fairly drawn from all the circumstances." Id. (quoting State v. Sadino, 64 Haw. 427, 430, 642 P.2d 534, 536-37 (1982)). Ahina failed to comply with the requirement that he report to his Probation Officer as directed by his Probation Officer three times with the last scheduled report date specifically scheduled to accommodate Ahina's work schedule, yet he still failed to report. No reasons for the failures to report were offered. Given Ahina's conduct and the inferences fairly drawn from all of the circumstances, there was sufficient evidence that Ahina acted intentionally and deliberately attempted to circumvent the probation order by violating a substantial condition of his probation.

The rehabilitative and protective factors set out by the legislature in HRS § 706-606 (2014) are relevant in considering whether a defendant's violation of probation is inexcusable. Villiarimo, 132 Hawai'i at 221, 320 P.3d at 886. HRS § 707-606 states:

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§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;
- (3) The kinds of sentences available; and
- (4) The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

Prior to September 2012, Ahina had only minimal reporting requirements. However, after Ahina's Probation Officer discovered that he had been arrested for multiple offenses in August 2012 and failed to report these arrests to her, she attempted to increase the number of interviews with him. This action by Ahina's Probation Officer was consistent with three of the protective factors set out in HRS § 706-606(2)(b), (c), and (d) and therefore a prudent step in promoting the purposes of probation. When Ahina failed to report and meet with his Probation Officer from late September to October 2012, Ahina's Probation Officer could not determine what Ahina's circumstances were and whether those circumstances placed the public at risk for further crimes from Ahina, whether he was likely to engage in criminal conduct, or whether treatment for intoxication issues was necessary. Ahina's repeated failure to report circumvented the probation order, undermined the purposes of his sentence, and negatively impacted on the goals of probation.

Based on the evidence and taking the protective and rehabilitative purposes of probation into account, there was substantial evidence supporting the Family Court's finding that Ahina inexcusably failed to report to his probation officer as directed.

Therefore,

IT IS HEREBY ORDERED that the December 5, 2013 "Order Revoking Probation and Resentencing Defendant," entered by the Family Court of the Second Circuit, is affirmed.

DATED: Honolulu, Hawai'i, May 31, 2016.

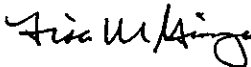
On the briefs:

Ben C. Summit,
for Defendant-Appellant.


Chief Judge

Peter A. Hanano,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellee.


Associate Judge


Associate Judge