

NO. 23580

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

HUNG VAN HUYNH, aka HUNG LAC, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NOS. 97-3002)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Ramil, and Acoba, JJ.)

Defendant-Appellant Hung Van Huynh (Huynh) appeals from the June 14, 2000 judgment and sentence of the first circuit court, Judge Wilfred Watanabe presiding. Huynh was charged with attempted murder in the first degree, in violation of Hawai'i Revised Statutes (HRS) §§ 705-500, 706-656 and 707-701 (1993) [Count I], possession of a firearm by a person convicted of certain crimes, in violation of HRS §§ 134-7(b) and (h) (1993 & Supp. 2000) [Count II], and possession of ammunition by a person convicted of certain crimes, in violation of HRS §§ 134-7(b) and (h) [Count III]. A jury found Huynh not guilty of possessing the gun and firearm in Counts II and III and guilty of the lesser included offense of attempted assault in the second degree in Count I. Huynh was sentenced to five years imprisonment with a mandatory minimum term of three years and four months.

On appeal, Huynh contends that (1) “[t]here was no substantial evidence to support Huynh’s conviction in Count I, and (2) “[t]he jury’s verdict in Count I was implicitly an inconsistent verdict.” Upon carefully reviewing the record and briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold that Huynh failed to provide viable arguments so as to enable this court to grant him relief from the judgment of conviction.

First, Huynh incorrectly assumes that the jury acquitted him of attempted murder in the first degree based on the defenses of duress and renunciation. There is nothing in the record that confirms or disproves Huynh’s assumption. See, e.g., Aka v. Hundahl, 78 Hawai’i 230, 891 P.2d 1022 (1995) (stating that “[b]ecause the special verdict did not require the jury to specify the grounds on which it found Appellee negligent, the basis for the jury’s verdict is not clear.”). Second, Huynh incorrectly assumes that if the defenses of duress and renunciation apply to acquit Huynh of the attempted murder in the first degree charge, then they must necessarily apply to acquit him of all included offenses. Even assuming that the jury found that Huynh was under duress or had manifested an adequate renunciation from the offense of attempted murder in the first degree, there is sufficient evidence that the jury also believed that Huynh nonetheless committed the offense of attempted assault

in the second degree. Third, Huynh incorrectly believes that an inconsistent verdict is created whenever a defendant is acquitted of a charged offense based on an affirmative defense but is convicted of an included offense.

IT IS HEREBY ORDERED that the circuit court's June 14, 2000 judgment and sentence are affirmed.

DATED: Honolulu, Hawai'i, January 16, 2002.

On the briefs:

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for defendant-appellant

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