

NOT FOR PUBLICATION

NO. 25204

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
NATHANIEL PENN, Defendant-Appellant,
and MASA AKI NEMOTO, Defendant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 00-1-0425)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Nathaniel Penn (Penn) appeals from the Judgment filed on June 14, 2002 in the Circuit Court of the First Circuit (circuit court).¹ Penn was convicted of Burglary in the First Degree, in violation of Hawaii Revised Statutes (HRS) § 708-810(1)(c) (1993), and Robbery in the First Degree, in violation of HRS § 708-840(1)(b) (1993 & Supp. 2003).

On appeal, Penn contends² the circuit court³ erred in denying his "Motion for Specific Performance of [Plea Bargain]

¹ The Honorable Richard K. Perkins presided.

² Defendant-Appellant Nathaniel Penn's Second Amended Opening Brief fails to comply with Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(3) in failing to include "record references supporting each statement of fact or mention of court . . . proceedings." Specifically, the opening brief fails to include record references for facts presented, refers to "RA" without a page number, and fails to include volume numbers for the record references. Defendant-Appellant Penn's counsel is warned that future non-compliance with HRAP 28 may result in sanctions against him.

³ The Honorable Frances Q. F. Wong presided.

Offer and Remedy for Denial of Equal Protection" (Motion for Specific Performance).

Upon careful review of the record and the briefs submitted by the parties, we hold that the circuit court did not abuse its discretion in denying Penn's Motion for Specific Performance because there was no plea agreement to enforce under Hawai'i Rules of Penal Procedure Rule 11(e) and Penn does not have a constitutional right to a plea bargain. Weatherford v. Bursey, 429 U.S. 545, 561, 97 S. Ct. 837, 846 (1977).

Therefore,

IT IS HEREBY ORDERED that the Judgment filed on June 14, 2002 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, October 21, 2004.

On the briefs:

Andre S. Wooten
for defendant-appellant.

Acting Chief Judge

Mark Yuen,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.

Associate Judge

Associate Judge