

IN THE SUPREME COURT OF THE STATE OF HAWAI`I

STATE OF HAWAI`I,)	CR. NO. 94-478
)	
Plaintiff-Appellee,)	APPEAL FROM ORDER OF
)	RESENTENCING, REVOCATION OF
vs.)	PROBATION, filed on June 10,
)	1999
ROY HOWARD CARLSEN,)	
)	THIRD CIRCUIT COURT
_____Defendant-Appellant.)	
_____)	

SUMMARY DISPOSITION ORDER

The defendant-appellant Roy Howard Carlsen appeals from the third circuit court's order of resentencing upon revocation of probation, filed on June 10, 1999. Carlsen raises two points of error: (1) that a probation officer's statements during the resentencing proceedings constituted excessive and impermissible advocacy that infected the circuit court's determination of Carlsen's sentence; and (2) that he was denied his right to allocution. Carlsen does not contest the revocation of his probation. The prosecution concedes that the circuit court did not personally invite Carlsen to allocute during the resentencing proceedings, and, therefore, purports to confess that a remand for resentencing would be appropriate.

However, upon carefully reviewing 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, and, furthermore, even assuming that the alleged errors of which Carlsen complains did occur, we hold that they were harmless beyond a reasonable doubt.

With regard to Carlsen's first point of error, we hold that, inasmuch as HRS § 706-605 (Supp. 1987) did not authorize a sentence of probation in contravention of the express provisions of HRS § 706-659 (1985), and a term of probation pursuant to HRS

§ 706-606.3 (1993) could not have been imposed because Carlsen could not gain admission into a court-approved sex offender treatment program, see HRS § 706-606.3(9) (a), the circuit court was statutorily required to resentence Carlsen to a twenty-year indeterminate term of imprisonment without the possibility of suspension of sentence or probation, pursuant to HRS § 706-659, and, therefore, that the probation officer's comments could not have affected the circuit court's imposition of that sentence.

With regard to Carlsen's second point of error, we hold that the circuit court's failure specifically to invite Carlsen to speak during the resentencing proceedings, see State v. Chow, 77 Hawai'i 241, 247, 883 P.2d 663, 669 (App. 1994), did not deprive Carlsen of his right to allocution, inasmuch as Carlsen did, in fact, exercise his right to allocution during the resentencing proceedings, see Transcript of Proceedings 4/8/99 at 9-11. Therefore,

IT IS HEREBY ORDERED that the order from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, June 8, 2000.

On the briefs:

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for the defendant-appellant
Roy Howard Carlsen

RONALD T.Y. MOON
Chief Justice

Lincoln S.T. Ashida,
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State of Hawai'i

STEVEN H. LEVINSON
Associate Justice

PAULA A. NAKAYAMA
Associate Justice

MARIO R. RAMIL
Associate Justice

SIMEON R. ACOBA
Associate Justice