

NO. 23626

IN THE SUPREME COURT OF THE STATE OF HAWAII

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STATE OF HAWAII, Plaintiff-Appellee

vs.

DEREK SCHMIDT, Defendant-Appellant

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APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT  
(CASE NO. LCT1:2P400-115)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Derek Schmidt appeals from the judgment of the District Court of the Second Circuit, the Honorable Yoshio Shigezawa presiding, convicting him of one count of theft in the fourth degree, in violation of Hawaii Revised Statutes (HRS) § 708-833 (1993). Schmidt was originally charged with theft in the third degree, in violation of HRS § 708-832(1)(a) (1993). On appeal, Schmidt argues that: 1) the trial court erred in applying the statute of limitations for theft in the third degree rather than the statute of limitations for theft in the fourth degree; and 2) because the prosecution did not commence the case within the one-year statute of limitations applicable to theft in the fourth degree, the judgment must be reversed. The prosecution concedes that the statute of limitations for theft in the fourth degree applies.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments made and the issues raised by the parties, we

resolve defendant-appellant's arguments as follows: 1) the trial court erred in concluding that the statute of limitations for the charged offense, theft in the third degree, applied rather than the statute of limitations for the offense Schmidt was convicted of, theft in the fourth degree; see HRS § 701-114(1)(e) (stating that the prosecution must prove, beyond a reasonable doubt,

[f]acts establishing that the offense was committed within the time period specified in section 701-108 ); 2) Schmidt was not charged within the one-year statute of limitations, and therefore, the offense of theft in the fourth degree was time-barred. Further, Schmidt did not waive the state of limitations. See State v. Timoteo, 87 Hawaii 108, 116, 952 P.2d 865, 873 (1997).

THEREFORE, IT IS HEREBY ORDERED that the district court's judgment of conviction is reversed.

DATED: Honolulu, Hawaii, September 28, 2001.

On the briefs:

David A. Fisher, Deputy  
Public Defender, for  
defendant-appellant

Richard K. Minatoya, Deputy  
Prosecuting Attorney, for  
plaintiff-appellee