

NO. 22942

IN THE SUPREME COURT OF THE STATE OF HAWAII

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STATE OF HAWAII, Plaintiff-Appellee,

vs.

ORLANDO MENDOZA, Defendant-Appellant.

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CR. NO. 97-1146)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, and Nakayama, JJ.,  
and Acoba, J., dissenting, with whom  
Ramil, J., joins)

Following a first circuit court bench trial before the Honorable Frances Q.F. Wong, defendant-appellant Orlando Mendoza was convicted of and sentenced for attempted murder in the second degree, in violation of Hawaii Revised Statutes (HRS) §§ 705-500 and 707-707.5 (1993), for attacking his wife with a clothing iron. On appeal, Mendoza contends that: (1) the colloquy conducted by then-circuit court judge, the Honorable Wendell K. Huddy, regarding his waiver of his right to a jury trial was insufficient to establish a knowing, intelligent, and voluntary waiver; (2) the trial court erred in concluding that Mendoza did not prove by a preponderance of the evidence that he did not have the substantial capacity to appreciate the wrongfulness of his

conduct or conform his conduct to the requirements of the law; and (3) he was denied effective assistance of trial counsel.

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, we hold as follows:

(1) Waiver of Jury Trial: Based on our review of the record and the totality of the circumstances in this case, we hold that Mendoza has failed to demonstrate that his on-the-record waiver of his right to a jury trial was not knowingly, intelligently, and voluntarily entered and that, therefore, the colloquy conducted by Judge Huddy was sufficient to obtain a valid waiver. See State v. Friedman, 93 Hawai i 63, 68-69, 996 P.2d 268, 273-74 (2000); State v Ibuos, 75 Hawai i 118, 121, 857 P.2d 576, 578 (1993).

(2) Substantial Capacity: Based on a review of all the evidence adduced at trial, we hold that there was substantial evidence to support the trial court's finding that, although Mendoza suffered from a mental disease, disorder, or defect, Mendoza failed to prove by a preponderance of the evidence that he lacked substantial capacity to conform his conduct to the requirements of the law. See State v. Young, 93 Hawai i 224,

231, 999 P.2d 230, 237 (2000); see also HRS § 704-400 (1993); HRS 704-402(1) (1993); HRS § 701-115(2) (b) (1993).<sup>1</sup>

(3) Ineffective Assistance of Counsel: (a) Inasmuch as it was undisputed at trial and the trial court expressly found

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<sup>1</sup> In this case, Mendoza does not contend that the prosecution failed to present substantial evidence in support of the verdict or that the trial court arbitrarily ignored evidence; rather, he essentially urges this court to re-evaluate the weight of the evidence presented. In so doing, the dissent concludes that Mendoza lacked the substantial capacity to appreciate the wrongfulness of his conduct or conform his conduct to the requirements of the law based upon its finding that there was more than the preponderance of the evidence necessary to prove [Mendoza s] affirmative defense[.] Dissenting op. at 1. Having considered all of the evidence, including the credibility of all of the witnesses, the trial court expressly found:

Of all the experts who testified, Dr. Donovan has the most extensive forensics background. He also interviewed third parties and reviewed more records concerning [Mendoza s] treatment and behavior. Dr. Donovan also rendered an opinion in this case which was more thoughtful and well supported than the opinions of Dr. Cooper and Dr. Wingert. Dr. Donovan s knowledge in the area of domestic violence was also more apparent and he applied that knowledge to the facts of this case. Overall, the [c]ourt finds Dr. Donovan s opinion to be the most credible of the three opinions from mental health experts. His opinion best illuminated an otherwise complex set of facts.

Finding of Fact No. 31 (emphasis added.) Moreover, the trial court concluded:

The evidence in this case which includes but is not limited to the testimony of eyewitnesses, [Mendoza s] own utterances immediately after the offense, the observations of the police officers immediately after the offense, and the notes and observations of prison personnel following [Mendoza s] arrest as noted by Dr. Donovan, and the Queen s records, overwhelmingly establishes [Mendoza s] guilt and his penal capacity at the time of the offense.

Conclusion of Law No. 4. It is a firmly established principle of law that an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the province of the [trier of fact]. State v. Buch, 83 Hawaii 308, 321, 926 P.2d 599, 612 (1996) (citation omitted); see also State v. Ewing, 81 Hawaii 156, 165, 914 P.2d 549, 558 (App. 1996) (stating that [t]he question of credibility and the weight to be given the evidence is for the trier of fact to determine and is not [to be] disturbed on appeal ). Moreover, when an appellate court passes upon the legal sufficiency of the evidence adduced at trial, such evidence must be considered in the strongest light for the prosecution. Young, 93 Hawaii at 230, 999 P.2d at 236 (emphasis added).

that Mendoza suffered from a mental illness, we hold that any failure by trial counsel to present additional evidence of a family history of mental illness did not reflect a lack of skill, judgment or diligence entitling Mendoza to relief. See State v. Fukusaku, 85 Hawai i 462, 479-80, 946 P.2d 32, 49-50 (1997); State v. Richie, 88 Hawai i 19, 39, 960 P.2d 1227, 1247 (1998).

(b) Inasmuch as Dennis Donovan, Ph.D., specifically stated, in his written evaluation for the court and during his testimony, that the victim s description of Mendoza s mental state preceding the attack was inconsistent, trial counsel s failure to cross-examine Dr. Donovan regarding such inconsistencies did not reflect a lack of skill, judgment, or diligence entitling Mendoza to relief. See id.

(c) The record on appeal is insufficient to support Mendoza s claim that trial counsel s failure to further investigate and present evidence regarding the effect of medications Mendoza had been taking at the time of the attack constituted ineffective assistance of counsel. However, based on the crucial role of the expert opinions as to Mendoza s penal responsibility in this case, Mendoza has alleged facts that, if proven, would entitle him to relief and that the claim is not patently frivolous and without a trace of support in the record. Thus, we reject Mendoza s final claim without prejudice to a subsequent Hawai`i Rules of Penal Procedure (HRPP) Rule 40

petition. See State v. Silva, 75 Hawai i 419, 439, 864 P.2d 583, 592-93 (1993). Accordingly,

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

DATED: Honolulu, Hawai i, October 4, 2001.

On the briefs:

Linda C. R. Jameson,  
Deputy Public Defender,  
for defendant-appellant

Caroline M. Mee,  
Deputy Prosecuting Attorney,  
for plaintiff-appellee