
NO. 23248

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Interest of

JOHN DOE,
Born on February 26, 1983,
Juvenile

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-J NO. 00-21514)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson and Nakayama, JJ.;
Intermediate Court of Appeals Associate Judge Foley,
assigned by reason of vacancy; and Acoba, J.,
concurring separately)

Defendant-appellant John Doe (Minor) appeals from the Family Court of the First Circuit's February 1, 2000 order revoking his probation and its February 11, 2000 order denying his motion for reconsideration. On appeal, Minor argues that the family court abused its discretion when it excluded defense witness Brian Kekua from testifying at his probation revocation hearing, and the prosecution concedes error.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the issues raised and the arguments advanced, we hold as follows:

Brian Kekua's testimony was material and relevant to the issue of whether Minor violated the terms of his probation under Hawai'i Revised Statutes (HRS) § 571-41(d) (1993), and its

exclusion prevented Minor from adducing evidence on his behalf, thereby implicating the due process guarantee to a fair trial. State v. Ahlo, 79 Hawai'i 385, 399, 903 P.2d 690, 704 (App. 1995) (citations omitted). Given the availability of less severe remedies, the exclusion of Kekua's testimony was not a proper exercise of the family court's inherent authority to impose sanctions for abusive litigation practices, see Bank of Hawai'i v. Kunimoto, 91 Hawai'i 372, 387, 984 P.2d 1198, 1213 (1999) (citations omitted), and, therefore, the family court abused its discretion in refusing to permit Kekua to testify in support of Minor. Accordingly,

IT IS HEREBY ORDERED that the family court's February 1, 2000 order revoking Minor's probation and February 11, 2000 order denying his motion for reconsideration are vacated, and this case is remanded for proceedings consistent with this order.

DATED: Honolulu, Hawai'i, June 26, 2003.

On the briefs:

Rose Anne Fletcher,
Deputy Public Defender,
for minor-appellant

Bryan K. Sano,
Deputy Prosecuting Attorney,
for plaintiff-appellee