
NO. 25313

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellant,

vs.

HENRY CAMACHO, Defendant-Appellee.

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 02-1-0724)

SUMMARY DISPOSITION ORDER

(Considered by: Moon, C.J., Levinson, Nakayama, and
Acoba, JJ., and Circuit Judge Del Rosario,
assigned by reason of vacancy)

Appellant the State of Hawai'i (the prosecution)
appeals from the September 9, 2002 order of the Circuit Court of
the First Circuit, the Honorable Sandra A. Simms presiding,
dismissing a charge of promoting a dangerous drug in the third
degree¹ as a de minimis offense, pursuant to HRS § 702-236

¹ Hawai'i Revised Statutes (HRS) § 712-1243 (1993 and Supp.
2000) states:

(1) A person commits the offense of promoting
a dangerous drug in the third degree if the person
knowingly possesses any dangerous drug in any
amount.

(2) Promoting a dangerous drug in the third
degree is a class C felony.

(3) Notwithstanding any law to the contrary,
if the commission of the offense of promoting a
dangerous drug in the third degree under this
section involved the possession or distribution of
methamphetamine, the person convicted shall be
sentenced to an indeterminate term of imprisonment

(continued...)

(1993).² On appeal, the prosecution raises ten points of error challenging the circuit court's findings of fact 7 through 11, conclusions of law 1 through 4, and order dismissing the charge of promoting a dangerous drug in the third degree.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the issues raised and the arguments presented, we hold: (1) the circuit court's finding that the .004 grams of a substance

¹(...continued)

of five years with a mandatory minimum term of imprisonment, the length of which shall be not less than thirty days and not greater than two-and-a-half years, at the discretion of the sentencing court. The person convicted shall not be eligible for parole during the mandatory period of imprisonment.

² HRS § 702-236 provides:

(1) The court may dismiss a prosecution if, having regard to the nature of the conduct alleged and the nature of the attendant circumstances, it finds that the defendant's conduct:

- (a) Was within a customary license or tolerance, which was not expressly refused by the person whose interest was infringed and which is not inconsistent with the purpose of the law defining the offense; or
- (b) Did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or
- (c) Presents such other extenuations that it cannot reasonably be regarded as envisaged by the legislature in forbidding the offense.

(2) The court shall not dismiss a prosecution under subsection (1)(c) of this section without filing a written statement of its reasons.

containing methamphetamine would "have no pharmacological or mood-altering effect or physiological effect upon the central nervous system," was not clearly erroneous, State v. Cordeiro, 99 Hawai'i 390, 405, 56 P.3d 692, 707 (2002) ("an appellate court will not pass upon issues dependent upon credibility of witnesses and the weight of the evidence; this is the province of the trial judge"); (2) the circuit court's written order and oral ruling clearly indicate that it considered the police reports admitted into evidence that document the surrounding circumstances of Camacho's arrest; (3) the circuit court did not clearly err in finding that the totality of circumstances indicated that Camacho's conduct constituted a de minimis infraction, Id.; (4) based upon its findings of fact, the circuit court's conclusion of law that Camacho's conduct constituted a de minimis offense was not wrong; and (5) the circuit court did not exceed the bounds of reason or disregard rules or principles of law or practice to the substantial detriment of a party in dismissing the charge of promoting a dangerous drug in the third degree. See State v. Fukagawa, 100 Hawai'i 498, 503, 60 P.3d 899, 904 (2002) (a trial court's decision under HRS § 702-236 is reviewed for an abuse of discretion). Therefore,

IT IS HEREBY ORDERED that the September 9, 2002 order from which this appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, June 30, 2003.

On the briefs:

Loren J. Thomas,

Deputy Prosecuting Attorney,
for plaintiff-appellant

Phyllis J. Hironaka,
Deputy Public Defender,
for defendant-appellee