
NO. 24471

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

WILLIAM M. CONKLIN, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 85-1586)

SUMMARY DISPOSITION ORDER

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

On December 23, 1985, Defendant-Appellant William M. Conklin (Defendant) was charged by complaint with murder, Hawai'i Revised Statutes (HRS) § 707-701 (1976), allegedly committed on November 30, 1985.¹ On August 4, 1986, the first circuit court sentenced Defendant to life imprisonment with the possibility of parole, apparently pursuant to HRS § 706-606(b) (1976 & Supp. 1984).² On September 3, 1986, Defendant appealed. This court

¹ HRS § 707-701 stated in pertinent part as follows:

(1) . . . [A] person commits the offense of murder if he intentionally or knowingly causes the death of another person.

(2) Murder is a class A felony for which the defendant shall be sentenced to imprisonment as provided in [HRS §] 706-606.

(Emphasis added.)

² HRS § 706-606 stated, in relevant part, as follows:

Sentence for offense of murder. The court shall sentence a person who has been convicted of murder to an indeterminate term of imprisonment. In such cases the court

(continued...)

affirmed Defendant's conviction on October 6, 1987.

On April 26, 2001, Defendant filed a Hawai'i Rules of Penal Procedures (HRPP) Rule 35 motion.

On July 30, 2001, the court³ denied the motion.

On appeal, Defendant contends that: (1) Act 314, Session Laws of Hawai'i 1986, which amended HRS §§ 701-100 and 701-101(2),⁴ allows him to "collaterally attack" his sentence;

²(...continued)

shall impose the maximum length of imprisonment as follows:

- (a) Life imprisonment without possibility of parole in the murder of:
 - (i) A peace officer while in the performance of his duties, or
 - (ii) A person known by the defendant to be a witness in a murder prosecution, or
 - (iii) A person by a hired killer, in which event both the person hired and the person responsible for hiring the killer shall be punished under this subsection, or
 - (iv) A person while the defendant was imprisoned.
- (b) Life imprisonment with possibility of parole or twenty years as the court determines, in all other cases.

(Emphasis added.)

³ The Honorable Marie N. Milks issued the order herein.

⁴ HRS § 701-101 (Supp. 1987) stated as follows:

Applicability to offenses committed before the effective date of amendments. (1) Except as provided in subsection (2), amendments made by Act 314, Session Laws of Hawaii 1986, to this Code do not apply to offenses committed before the effective date of Act 314 Prosecutions for offenses committed before the effective date of Act 314[] are governed by the prior law, which is continued in effect for that purpose, as if amendments made by Act 314 . . . to this Code were not in force. For purposes of this section, an offense is committed before the effective date of Act 314 . . . if any of the elements of the offense occurred before that date.

(2) In any case pending on or commenced after the effective date of amendments made by Act 314, Session Laws of Hawaii 1986, to this Code, involving an offense committed before that date upon the request of the defendant, and subject to the approval of the court, the provisions of

(continued...)

(2) his sentence is illegal because the sentencing provisions of HRS § 706-606 in existence at the time of his sentence have been repealed; (3) the "only remedy" is to resentence Defendant under HRS § 706-659 to a Class A felony prison term of twenty years; (4) the court erred in refusing him counsel; and (5) the court was biased because other defendants with similar claims have been afforded counsel.

Similar arguments were posed in State v. Levi, 102 Hawai'i 282, 75 P.3d 1173 (2003), and rejected. As to Defendant's first point, (1) Act 314 took effect on January 1, 1987, (2) the offense was committed in 1985, prior to the effective date of Act 314, (3) his case did not commence after that date, see supra note 4, (4) insofar as his case may be viewed as "pending" on January 1, 1987, id., because it was on appeal, Defendant does not contend nor is there any indication the circuit court approved the applicability of Act 314 to his case, (5) Defendant's case thus did not come within the parameters of HRS § 701-101(2), and (6) as indicated in HRS § 701-101, then, Defendant's case is "governed by the prior law . . . as if amendments made by Act 314 to [the] Code were not in force."

⁴(...continued)
chapter 706 amended by Act 314 . . . may be applied in particular cases.

(Emphases added.)

As to Defendant's second and third points, (1) until it was repealed on January 1, 1987, HRS § 707-701 (Supp. 1973) described murder as a class A felony but directed that a defendant "shall be sentenced to imprisonment as provided in HRS § 706-606," (2) HRS § 706-606 authorized a sentence of life imprisonment with the possibility of parole, see supra note 2, and this was the sentence imposed on Petitioner in 1986, (3) "the text of HRS § 706-606 was repealed in its entirety and replaced with new language relating to factors to be considered in imposing a sentence[,] [s]ee 1986 Haw. Sess. L. Act 314, § 15, at 599-600[,]" Levi, 102 Hawai'i at 284, 75 P.3d at 1175, but (4) "[w]e discern[ed] no legislative intent or expression in Act 314 indicating that the repeal of the life sentencing language in HRS § 706-606 on January 1, 1987 rendered any sentence previously imposed thereunder invalid," id. at 287, 75 P.3d at 1178, and, therefore, (5) Defendant's sentence was correct.

As to Defendant's fourth claim, (1) "the United States Supreme Court [has] held that the federal constitutional right to counsel does not extend to post-conviction challenges[,]" id. at 288, 75 P.3d at 1179, (2) "[t]his court, however, has held that counsel may be appointed in post conviction proceedings at the discretion of the court[] [i]n Engstrom v. Naauao, 51 Haw. 318, 459 P.2d 376 (1969)," Levi, 102 Hawai'i at 288, 75 P.3d at 1179 (footnote omitted), but (3) "[a]s in Engstrom, the instant case lacks 'substantial issues' that would support the appointment of

counsel for Defendant[,]" and thus "we cannot say under these circumstances that the court abused its discretion in denying counsel[,]" id.

As to Defendant's fifth point, (1) "Defendant does not present any relevant facts indicating bias or prejudice of a personal nature," id. at 289, 75 P.3d at 1180, (2) the court was correct with regard to appointment of counsel, and, hence, (3) we find no error with respect to these matters. Therefore,

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that the court's July 30, 2001 order denying Defendant's HRPP Rule 35 motion, from which the appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, November 4, 2003.

On the briefs:

William M. Conklin, defendant-appellant, pro se.

Loren J. Thomas, Deputy Prosecuting Attorney, City & County of Honolulu, for plaintiff-appellee.