

*** NOT FOR PUBLICATION ***

NO. 25658

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

PETER M. ALLISON, Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(HPD Cr. No. 02488390)

SUMMARY DISPOSITION ORDER

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

The defendant-appellant Peter M. Allison appeals from the October 9, 2003 judgment of conviction and sentence of the district court of the first circuit, the Honorable George Y. Kimura presiding, convicting him of and sentencing him for the offense of harassment, in violation of Hawai'i Revised Statutes § 711-1106(1) (1) (Supp. 2002). On appeal, Allison argues, inter alia, that: (1) the district court violated his due process rights to argue for discovery and for access to witnesses under the fourteenth amendment of the United States Constitution and article I, section 5 of the Hawai'i Constitution; (2) the district court violated his right to counsel under the sixth amendment to the United States Constitution and article I, section 14 of the Hawai'i Constitution; (3) the district court judge denied his right to due process of law under the fourteenth amendment to the United States Constitution and article I, section 5 of the Hawai'i Constitution, by failure to voluntarily recuse himself; and (4) his right to an impartial judge guaranteed under the fourteenth amendment to the United States

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Constitution and the due process clause of the Hawai'i Constitution was violated by Judge Kimura's detailed and unduly extensive examination of the complainant and was plain error despite lack of objection.

Upon careful review of the record and the briefs submitted by the parties, it appears that the State concedes that Allison was insufficiently advised concerning waiver of the right to counsel. See State v. Dowler, 80 Hawai'i 246, 909 P.2d 574 (App. 1995); State v. Dickson, 4 Haw.App. 614, 673 P.2d 1036 (1983). We hold that the State's confession of error is supported by the record and is well-founded in law. See State v. Wasson, 76 Hawai'i 415, 879 P.2d 520, 523 (1994); Territory v. Kogami, 37 Haw. 174, 175 (1945). Therefore,

IT IS HEREBY ORDERED that Allison's conviction of and sentence for harassment is vacated and the case is remanded for a new trial.

DATED: Honolulu, Hawaii, December 15, 2003.

On the briefs:

Daniel H. Shimizu,
deputy prosecuting attorney
for plaintiff-appellee

Steven M. Shaw for
defendant-appellant