

**\*\*\* NOT FOR PUBLICATION \*\*\***

NO. 24432

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

ISAAC K. KALUA, III, Defendant-Appellant.

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APPEAL FROM THE FIRST CIRCUIT COURT  
(Cr. No. 00-1-1315)

SUMMARY DISPOSITION ORDER

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

The defendant-appellant Isaac K. Kalua, III appeals from the findings of fact (FOFs), conclusions of law (COLs), and order of the first circuit court, the Honorable Gail Nakatani presiding, denying his motion for reconsideration of sentence, filed on June 22, 2001. On appeal, Kalua argues that the circuit court (1) erred by denying his motion for reconsideration of sentence, inasmuch as four thousand dollars in restitution overcompensated the complainant for damages he caused to the complainant's truck in light of the fact that the truck was not "totaled" and repair was possible, (2) violated Hawai'i Revised Statutes (HRS) § 706-605(1)(d) (1993 & Supp. 2003) by imposing four thousand dollars in restitution to be paid at fifty dollars per month without entering express FOFs and COLs that the manner and method of payment were reasonable and that four thousand dollars was an amount Kalua could afford to pay, and (3) erred by denying his request to continue the hearing on the motion for reconsideration of sentence, inasmuch as he had subpoenaed the complainant to testify on the issue of damages and the

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complainant had failed to appear at the hearing.

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, we resolve Kalua's appeal as follows. Inasmuch as (1) Kalua successfully argued to the circuit court that the \$9,164.54 estimate of costs to repair damages submitted by the prosecution was unreasonably high given the market value of the truck, (2) the circuit court set restitution "giving consideration to the Kelley Blue Book valuation" of the truck at Kalua's request, and (3) Kalua never objected to the circuit court setting restitution at four thousand dollars, Kalua conceded that four thousand dollars represented a reasonable amount of restitution. Furthermore, "[r]estitution shall be a dollar amount that is sufficient to reimburse any victim fully for losses including but not limited to . . . the actual or estimated cost of repair, if repair is possible[,]" HRS § 706-646(3)(a), and the evidence adduced at the restitution hearing indicated that repair was possible and that restitution in the amount of four thousand dollars was to reimburse the complainant for the estimated costs of repairs. Thus, the circuit court did not "clearly [exceed] the bounds of reason or [disregard] rules or principles of law[,]" State v. Gaylord, 78 Hawai'i 127, 144, 890 P.2d 1167, 1184 (1995), by denying Kalua's motion for reconsideration of sentence.

In addition to conceding that four thousand dollars was an amount he could afford to pay by specifically requesting that the circuit court impose restitution in the amount of the Kelley Blue Book value for the complainant's truck, Kalua waived the

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argument that the circuit court erred by neglecting to enter specific FOFs that he could afford to pay restitution by failing to object at the restitution hearing and the hearing on the motion for reconsideration of sentence. Moreover, “[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.” Hawai‘i Rules of Penal Procedure (HRPP) Rule 52(a) (2004). Therefore, notwithstanding that the circuit court failed to enter into the record specific FOFs and COLs that the manner of payment of restitution was reasonable and one that Kalua could afford, the error was harmless.

The accused in a criminal prosecution has the constitutional right to compulsory process for obtaining witnesses in his or her favor. U.S. Const. amend. VI; Haw. Const. art. I, § 14; Washington v. Texas, 388 U.S. 14 (1967). The right to compulsory process, however, is subject to limitations. State v. Savitz, 67 Haw. 59, 60-61, 677 P.2d 465, 466-67 (1984); State v. Valmoja, 56 Haw. 452, 540 P.2d 63 (1975); State v. Bullen, 63 Haw. 27, 620 P.2d 728 (1980); State v. Diaz, 100 Hawai‘i 210, 226, 58 P.3d 1257, 1273 (2002). “One such limitation is that a defendant is only afforded the right to compel attendance and testimony of witnesses who can give relevant and beneficial testimony for the defense.” State v. Mitake, 64 Haw. 217, 638 P.2d 324 (1981). Assuming arguendo that Kalua has the right to compulsory process at a hearing on a motion for reconsideration of sentence, his contention that the circuit court violated his right to compulsory process fails, inasmuch as the content of the complainant’s testimony at the

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hearing was purely speculative and Kalua failed to demonstrate how the testimony would benefit him. Therefore,

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

DATED: Honolulu, Hawai'i, July 20, 2004.

On the briefs:

Edward Harada, deputy  
public defender, for  
the defendant-appellant  
Isaac K. Kalua, III

Mark Yuen, deputy  
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the plaintiff-appellee  
State of Hawai'i