

*** NOT FOR PUBLICATION ***

NO. 25273

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee-Respondent,

vs.

KENNETH OKI, Defendant-Appellant-Petitioner,

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(Case No. 262374MK/CR. NO. LC02-037)

SUMMARY DISPOSITION ORDER

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

On June 10, 2004, the defendant-appellant-petitioner Kenneth Oki filed an application for a writ of certiorari, requesting that this court review the summary disposition order of the Intermediate Court of Appeals (ICA) in State v. Oki, No. 25273, filed on May 11, 2004 [hereinafter, "the ICA's SDO"], affirming the judgment and sentence of the district court of the fifth circuit, the Honorable Frank D. Rothschild presiding, filed on February 24, 2004,¹ convicting him of and sentencing him for driving without no-fault insurance, in violation of Hawai'i Revised Statutes (HRS) § 431:10C-104(a) (Supp. 2003).

Oki contends in his application that the ICA erred in finding that the record showed that he entered a plea of not guilty on June 14, 2002, inasmuch as notations upon the district court calendar provided the ICA with "certified and sufficient evidence" that arraignment did not occur during his first or second appearances, "as required by Hawai'i Rules of Penal

¹ On February 12, 2004, the ICA remanded the present matter to the district court for the entry of a written judgment pursuant to State v. Bohannon, 102 Hawai'i 228, 74 P.3d 980 (2003). On February 24, 2004, the district court filed a written judgment of conviction and sentence.

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Procedure Rule 10.1," notwithstanding that he failed to provide transcripts to support his contention.

Upon carefully reviewing the record and Oki's application and having given due consideration to the arguments advanced and the issues raised, it is apparent that the ICA's statement that Oki entered a plea of not guilty on June 14, 2002 was erroneous. On the record before us, the district court calendar for June 14, 2002 shows only that Oki was present in the district court with his wife and that the trial was continued to June 21, 2002. On appeal, Oki failed to provide transcripts of any proceedings, other than trial and sentencing, to support his contention that he was never orally arraigned and never entered a plea. Hawai'i Rules of Appellate Procedure (HRAP) Rule 10(b)(1)(A) (2004) states:

When an appellant desires to raise any point on appeal that requires consideration of the oral proceedings before the court or agency appealed from, the appellant shall file with the clerk of the court appealed from, within 10 days after filing the notice of appeal, a request or requests to prepare a reporter's transcript of such parts of the proceedings as the appellant deems necessary that are not already on file.

(Emphases added.) Moreover, we may not now consider the June 14, 2002 transcript of proceedings that Oki requested on May 18, 2004, subsequent to the ICA's disposition of his appeal. See HRAP Rule 40.1(i) (2004) ("If the supreme court accepts the application for a writ of certiorari to review a decision of the intermediate court of appeals, the case shall be decided on the record and the briefs previously filed."). (Emphases added). "Without the relevant transcript[s], there is insufficient evidence to review the alleged error, and [Oki] carries the burden of demonstrating the alleged error in the record." State

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v. Hoang, 93 Hawai'i 333, 336, 3 P.3d 499, 502 (2002) (emphasis in original). "Where the record is insufficient to show that the alleged error occurred, the presumption that the arraignment was valid as required by law must prevail." Id.

Inasmuch as Oki (1) has the burden of demonstrating that he was not formally arraigned, (2) failed on appeal to provide transcripts to demonstrate that he was not formally arraigned, and (3) has not complied with court rules, we hold that the ICA's error was harmless.

IT IS HEREBY ORDERED that the summary disposition order of the Intermediate Court of Appeals, filed on May 11, 2004, is affirmed.

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

Kenneth Oki,
defendant-appellant-
petitioner, pro se,
on the writ