

NO. 28478

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Respondent/Plaintiff-Appellee

vs.

ERIC ANTHONY WILSON, Petitioner/Defendant-Appellant.

NORMA T. YANO
CLERK OF APPELLATE COURTS
STATE OF HAWAII

2009 APR -7 AM 11:20

FILED

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CR. NO. 05-1-2201)

ORDER ACCEPTING APPLICATION FOR WRIT OF CERTIORARI
AND TEMPORARILY REMANDING CASE TO THE INTERMEDIATE
COURT OF APPEALS OF THE STATE OF HAWAI'I
(By: Moon, C.J., for the court¹)

Petitioner/defendant-appellant Eric Anthony Wilson's application for writ of certiorari, filed on March 20, 2009, is hereby accepted based upon an obvious inconsistency within the memorandum opinion of the Intermediate Court of Appeals (ICA) and a conflict between the ICA's judgment on appeal and its inconsistent opinion. See Hawai'i Revised Statutes (HRS) § 602-59 (Supp. 2008).²

¹ Considered by: Moon, C.J., Nakayama, Acoba, and Duffy, JJ., and Circuit Judge Ahn, assigned by reason of vacancy.

² HRS § 602-59 states in relevant part:

(a) After issuance of the [ICA's] judgment or dismissal order, a party may seek review of the [ICA's] decision and judgment or dismissal order only by application to the supreme court for a writ of certiorari, the acceptance or rejection of which shall be discretionary upon the supreme court.

(b) The application for writ of certiorari shall tersely state its grounds, which shall include:

(continued...)

In this case, Wilson was convicted of and sentenced for four counts of assault in the second degree (assault 2), three counts of abuse of a family or household member (household-abuse), and two counts of terroristic threatening in the first degree (TT1). On page three of its opinion, the ICA states:

We conclude that the [trial] court erred in failing to give the jury a merger instruction regarding the assault 2 and household-abuse offenses. Accordingly, we vacate the judgment as to those offenses and remand for further proceedings consistent with this opinion. In all other respects [(i.e., the TT1 convictions)], we affirm.

Wilson, mem. op. at 3 (emphases added).³ The ICA further explains:

Since factual issues existed as to whether the assault 2 and household-abuse charges stemming from each of the three incidents were grounded on the same conduct by Wilson or arose out of the same intent, impulse or scheme, the jury should have been instructed to consider whether the assault 2 and household-abuse charges merged.

. . . [O]n remand, [respondent/plaintiff-appellee State of Hawai'i] shall be afforded the option to either: (1) dismiss the household-abuse charges . . . ; or (2) retry Wilson with respect to the household-abuse and assault 2 charges with an appropriate merger instruction to the jury.

Id. at 31-32 (citations omitted) (emphases added). However, in the "Conclusion" section of the opinion, the ICA states:

In light of the foregoing discussion, we vacate the judgment entered by the [trial] court on March 14, 2007 and remand this case to the [trial] court for further proceedings consistent with this opinion.

²(...continued)

(1) Grave errors of law or of fact; or
(2) Obvious inconsistencies in the decision of the [ICA] with that of the supreme court, federal decisions, or its own decision, and the magnitude of those errors or inconsistencies dictating the need for further appeal.

(Emphases added.)

³ The ICA's analysis with regard to the TT1 offenses supports the conclusion that the ICA intended to affirm the TT1 convictions. See Wilson, mem. op. at 42-43.

Id. at 46 (emphasis added). Based on a plain reading of the foregoing, the entirety of the trial court's judgment is vacated, i.e., vacating all of Wilson's convictions, notwithstanding the ICA's earlier declaration that, "[i]n all other respects, we affirm." Id. at 3. Based on the above, the ICA's opinion both affirms and vacates Wilson's conviction and sentence for the TT1 offenses.

Additionally, the ICA's judgment on appeal reiterates the language from the "Conclusion" section of the opinion, stating in its entirety:

Pursuant to the [m]emorandum [o]pinion of the [ICA] of the [s]tate of Hawai'i entered on January 7, 2009, the judgment of the [trial court] entered on March 14, 2007 is vacated and the case is remanded for further proceedings consistent with the opinion.

(Emphasis added.) Given that portion of the memorandum opinion affirming the TT1 convictions, the ICA's judgment contradicts the memorandum opinion's affirmation. Consequently, pursuant to HRS § 602-5(6) (1993)⁴ and in the interest of judicial economy,

IT IS HEREBY ORDERED as follows:

1. This case is temporarily remanded to the ICA with instructions to correct the internal inconsistency within the memorandum opinion, as well as correct the judgment on appeal, and to enter an amended opinion and judgment reflecting an accurate recitation of the ICA's disposition.

⁴ HRS § 602-5(6) provides that "[t]he supreme court shall have jurisdiction and powers . . . [t]o make or issue any order or writ necessary or appropriate in aid of its appellate or original jurisdiction[.]"

2. The aforementioned amended opinion and judgment shall be filed within ten days from the date of this order.

We emphasize that our acceptance of the petitioner's application is not based upon the merits of the arguments raised therein. This court shall review the merits of petitioner's arguments upon receipt of the amended opinion and judgment on appeal and issue its decision in due course.

DATED: Honolulu, Hawai'i, April 7, 2009.

FOR THE COURT:


Chief Justice

