

NO. 22415

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

JACOB G. DANO, Defendant-Appellant

APPEALS FROM THE FIRST CIRCUIT COURT
(NO. 22415 (CR. NO. 98-1373) and NO. 22416 (CR. NO. 98-2143))

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Jacob G. Dano appeals from two judgments of conviction of assault in the second degree, in violation of Hawai'i Revised Statutes (HRS) § 707-711(1)(b) (1993). Dano was sixteen-years-old at the time of the incidents and, in each case, was originally charged as a minor. On appeal, Dano argues that the family court erred in waiving jurisdiction because: 1) the juvenile waiver statute, HRS § 571-22 (Supp. 1997) is unconstitutional; 2) he was denied due process when the family court waived jurisdiction in the first case under HRS § 571-22(d) (Supp. 1997) where the prosecution neither alleged that ground in the waiver petition nor argued it at the hearing; 3) the court abused its discretion in failing to consider reasonable rehabilitation programs outside of Hawai'i; and 4) the cumulative errors denied him a fair waiver proceeding.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to

the arguments made and the issues raised by the parties, we resolve defendant-appellant's arguments as follows: (1) HRS § 571-22 is not unconstitutional because, (a) it does not implicate the consent decree filed in Felix v. Waihee, Civil No. 93-00367-DEA (D. Hawai'i Oct. 25, 1994) and does not unduly burden the right to interstate travel and the right to freedom of movement, (b) article I, section 10 of the Hawai'i State Constitution does not require the family court to make a probable cause determination before waiving jurisdiction, see HRS § 571-1 (1993) (stating that family court adjudications shall not be deemed convictions), and (c) the factors enumerated in HRS § 571-22(c) (Supp. 1997), which the family court is not required to consider under subsection (d), do not constitute minimum standards of due process and fairness; (2) the family court did not err in granting the first waiver petition based in part on HRS § 571-22(d) even though that subsection was not invoked in the waiver petition and, assuming arguendo that it did err, the error was harmless because the court also based its decision on subsection (a), the elements of which were invoked in the petition and adjudicated at the waiver hearing; (3) the record on appeal indicates that the family court did consider the possibility of placing Dano in an institute or facility outside of Hawai'i and, based on the testimony at the waiver hearing, the family court did not abuse its discretion in declining to order

such placement; and (4) a reversal based on cumulative error is not warranted in this case.

THEREFORE, IT IS HEREBY ORDERED that the circuit court's judgments of conviction are affirmed.

DATED: Honolulu, Hawai'i, January 31, 2001.

On the briefs:

Hayden Aluli for
defendant-appellant

Loren J. Thomas, Deputy
Prosecuting Attorney, for
plaintiff-appellee