

NO. 22447

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,

vs.

PAUL POWERS, Defendant-Appellant.

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NOS. 97-1802, 95-0461 & 96-0162)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Paul Powers appeals the first circuit court's March 16, 1999 judgment of conviction and sentence in Cr. No. 97-1802 for one count of promoting a dangerous drug in the third degree, in violation of Hawai'i Revised Statutes (HRS) § 712-1243 (1993), and one count of unlawful use of drug paraphernalia, in violation of HRS § 329-43.5(a) (1993). Powers also appeals the circuit court's orders revoking his probation and resentencing him in Cr. Nos. 96-0162 and 95-0461, which were entered as a result of his conviction in Cr. No. 97-1802. On appeal, Powers argues that the circuit court erred by violating his constitutional right to proceed pro se when it: (1) summarily denied his February 23, 1999 pretrial

motion to proceed pro se;¹ and (2) constructively denied his renewed oral motion to proceed pro se on March 16, 1999, the day of the scheduled trial.² Further, Powers contends that, because he was erroneously convicted in Cr. No. 97-1802, the orders revoking his probation and resentencing him in the earlier cases must be vacated because they were based upon the erroneous conviction in Cr. No. 97-1802.

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 by the parties, we hold that: (1) the circuit court did not err when it denied Powers's February 23, 1999 motion because the plain language of the motion, requesting "an Order granting Defendant to proceed Pro-Se with Standby Counsel[,]" clearly requested hybrid representation and a defendant does not have a constitutional right to hybrid representation, see State v. Hirano, 8 Haw. App. 330, 336, 802 P.2d 482, 485 (1990); and (2) the circuit court did not "constructively deny" Powers the right to proceed pro se on March 16, 1999, because the transcript of the proceedings indicates that the court was in the process of investigating

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The Honorable Victoria S. Marks issued the order denying the February 23, 1999 motion.

² The Honorable Michael S. Town presided at the March 16, 1999 proceedings and issued the judgment of conviction and orders revoking probation and resentencing from which this appeal is taken.

Powers's concerns when Powers himself effectively halted the court's inquiry by requesting a conference with his attorney after which a valid plea agreement was proffered to the court. Finally, because we affirm the judgment in Cr. No. 97-1802, Powers's contentions with respect to Cr. Nos. 96-0162 and 95-0461 are without merit. Accordingly,

IT IS HEREBY ORDERED that the March 16, 1999 judgment and orders revoking probation and resentencing from which this appeal is taken are affirmed.

DATED: Honolulu, Hawai'i, August 30, 2001.

On the briefs:

Mark A. Worsham,
for defendant-appellant

Caroline M. Mee,
Deputy Prosecuting Attorney,
for plaintiff-appellee