

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

DANIEL B. KOSI, also known as "BOY,"
Defendant-Appellant.

APPEAL FROM THE SECOND CIRCUIT COURT
(CR. NOS. 97-0504(2) & 97-0520(2))

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Daniel B. Kosi appeals from the judgment of conviction and sentence of the Circuit Court of the Second Circuit, the Honorable Shackley F. Raffetto presiding. Kosi argues that the circuit court erred in: (1) denying his motion for a change of venue; (2) allowing the testimony of Toshiyuki Shibata, M.D. (Dr. Shibata); (3) finding him fit to stand trial; and (4) allowing trial to proceed without his presence.¹ Additionally, Kosi also claims that his trial counsel was ineffective.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to

¹ The Honorable Boyd P. Mossman presided over the motion for a change of venue and the fitness proceedings.

the arguments advanced and the issues raised, we hold that:

(1) the circuit court did not abuse its discretion in denying Kosi's motion for a change of venue; (2) Dr. Shibata's testimony did not affect Kosi's substantial rights and, therefore, does not constitute plain error; (3) the circuit court did not abuse its discretion in finding Kosi fit to stand trial; (4) Kosi waived his right to be present at his trial; (5) the record on appeal is insufficient to determine the merits of Kosi's allegation of ineffective assistance of trial counsel; and (6) Kosi's convictions were supported by sufficient evidence. Therefore,

IT IS HEREBY ORDERED that the July 30, 1999 judgment of conviction and sentence of the circuit court is affirmed, without prejudice to a Hawai'i Rules Penal Procedure Rule 40 petition for post-conviction relief.

DATED: Honolulu, Hawai'i, June 19, 2002.

On the briefs:

Andre' S. Wooten,
for defendant-appellant

Arleen Y. Watanabe,
Deputy Prosecuting Attorney,
for plaintiff-appellee