

NO. 23439

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

KATHY DIANE KELLY, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NOS. 97-0806 AND 98-2249)

SUMMARY DISPOSITION ORDER

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

Following a jury trial, the Honorable Marie N. Milks presiding, defendant-appellant Kathy Diane Kelly was found guilty of the offense of robbery in the second degree, in violation of Hawai'i Revised Statutes (HRS) § 708-841 (1993).¹ The first circuit court's final judgment of conviction and sentence, from which Kelly appeals, was filed on April 18, 2000. On appeal, Kelly contends that she was denied her right to court-appointed counsel at trial, in violation of article I, section 14 of the Hawai'i Constitution.

¹ HRS § 708-841 provides that:

§ 708-841 Robbery in the second degree. (1) A person commits the offense of robbery in the second degree if, in the course of committing theft:

- (a) The person uses force against the person of anyone present with the intent to overcome that person's physical resistance or physical power of resistance;
 - (b) The person threatens the imminent use of force against the person of anyone who is present with intent to compel acquiescence to the taking of or escaping with the property; or
 - (c) The person recklessly inflicts serious bodily injury upon another.
- (2) Robbery in the second degree is a class B felony.

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, we hold that the trial court did not abuse its discretion by refusing to allow Neal Kugiya to withdraw as Kelly's trial counsel. See State v. Soares, 81 Hawai'i 332, 355, 916 P.2d 1233, 1256 (App. 1996), overruled on other grounds by State v. Janto, 92 Hawai'i 19, 986 P.2d 306 (1999) (citing State v. Torres, 54 Haw. 502, 505, 510 P.2d 494, 496 (1973)). Therefore,

IT IS HEREBY ORDERED that the first circuit court's judgment of conviction and sentence for robbery in the second degree from which this appeal is taken is affirmed.

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

On the briefs:

Tae W. Kim
for defendant-appellant

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