

NO. 23445

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

---

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

WARREN DAVID MILLER, Defendant-Appellant,

and

JIMMY ANTHONY HERNANDEZ, Defendant.

---

APPEAL FROM THE FIRST CIRCUIT COURT  
(CR. NO. 50583)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Nakayama, and Duffy JJ.,  
Circuit Judge Marks, in place of Levinson, J., recused,  
and Circuit Judge Wilson in place of Acoba, J., recused)

Defendant-Appellant, Warren David Miller, appeals from the findings of fact, conclusions of law, and order denying application for conditional release from the Hawai'i State Hospital, filed on April 19, 2000, by the Circuit Court of the First Circuit, the Honorable Frances Q.F. Wong presiding. Miller contends that the circuit court: (1) erred in concluding that he is mentally ill; (2) denied him his constitutional right to confrontation with respect to the testimony of his younger daughter (taken in the judge's chambers); (3) abused its discretion by taking "judicial notice" of evidence in two sealed

family court cases; (4) abused its discretion by using his acquittal as evidence of wrongdoing; (5) erred by relying upon hearsay in support of its finding of dangerousness; (6) did not have enough evidence to support its finding of sexual abuse; (7) abused its discretion by attempting to impose a biased medical panel on subsequent courts; and (8) abused its discretion by creating and attempting to impose on subsequent courts a new definition of "safe release" for purposes of HRS § 704-415.

Upon carefully reviewing the record and the briefs submitted, we hold as follows: (1) the circuit court did not err in finding that Miller failed to meet his burden to prove, by a preponderance of the evidence, that he is no longer mentally ill or dangerous in order to be entitled to conditional release from the Hawai'i State Hospital. See Hawai'i Revised Statutes (HRS) § 704-415; State v. Miller, 84 Hawai'i 269, 933 P.2d 606 (1957); (2) the circuit court did not deny Miller his constitutional right to confront an adverse witness as the hearing on Miller's application seeking conditional release from the Hawai'i State Hospital is a civil proceeding and the constitutional right to confrontation of an adverse witness does not apply to civil proceedings. See HRS § 704-415; In re Doe Children, 85 Hawai'i 119, 938 P.2d 178 (App. 1997); (3) the circuit court did not

abuse its discretion by taking judicial notice of evidence in two family court civil cases. See HRS § 587-81; Brooks v. Minn, 73 Haw. 566, 570 n.2, 836 P.2d 1081, 1084 n.2 (1992); State v. Kotis, 91 Hawai'i 319, 984 P.2d 78 (1999); Hawai'i Rules of Evidence Rule 201; (4) the circuit court did not abuse its discretion by considering the files and records in Miller's civil termination of parental rights case in family court. See § 704-404(8); (5) the circuit court did not err by considering evidence of Miller's inability to abide by the rules at the Hawai'i State Hospital as this evidence was relevant to Miller's dangerousness; (6) the circuit court did not err by finding that there was substantial evidence that Miller sexually abused his daughters; (7) the circuit court abused its discretion when it designated three specific medical examiners to evaluate any future applications for release which Miller may file. See HRS § 704-414; and (8) the circuit court did not create a new definition of "safe release" when it utilized a checklist of factors to consider in evaluating Miller's dangerousness. See HRS § 704-415. Therefore,

IT IS HEREBY ORDERED that the circuit court's April 19, 2000 order, is vacated insofar as it designated three specific medical examiners to evaluate any future applications for release

which Miller may file, and the order denying Miller's petition for post-conviction relief is affirmed in all other respects.

DATED: Honolulu, Hawai'i, May 12, 2004.

On the briefs:

David A. Fisher,  
Deputy Public Defender,  
for Defendant-Appellant  
Warren David Miller

Jeffrey M. Albert,  
Deputy Prosecuting Attorney,  
for Plaintiff-Appellee  
State of Hawai'i