

NO. 23633

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

RONALD DEE ROBERTS, Defendant-Appellant

APPEAL FROM THE THIRD CIRCUIT COURT
(CR. NO. 99-0004)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Ronald Dee Roberts appeals from the order of re-sentencing of the third circuit court, the Honorable Riki May Amano presiding, sentencing him to five consecutive ten-year terms of imprisonment for five counts (Counts I-IV, and VI) of burglary in the first degree, in violation of Hawai'i Revised Statutes (HRS) § 708-810(1)(c) (1993),¹ and a one-year term of imprisonment for one count (Count V) of violation of an order for protection, in violation of HRS § 586-11 (Supp. 2000),² to run

¹ HRS § 708-810(1)(c) provides:

(1) A person commits the offense of burglary in the first degree if the person intentionally enters or remains unlawfully in a building, with intent to commit therein a crime against a person or against property rights, and:

. . . .
(c) The person recklessly disregards a risk that the building is the dwelling of another, and the building is such a dwelling.

² HRS § 586-11 provides in relevant part:

(a) Whenever an order for protection is granted pursuant to this chapter, a respondent or person to be restrained who knowingly or intentionally violates the order for protection is guilty of a misdemeanor.

consecutively to the other counts. On appeal, Roberts argues that the sentencing court abused its discretion in three ways: (1) it erroneously revoked probation and sentenced Roberts to one year of imprisonment for Count V because the second amended judgment had not placed Roberts on probation; (2) it ordered restitution without supporting it with findings of fact and conclusions of law; and (3) contrary to State v. Gaylord, 78 Hawai'i 127, 154, 890 P.2d 1167, 1194 (1995), it erroneously ordered all of the terms of imprisonment to run consecutively.

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) the circuit court erred when it revoked probation as to Count V because the amended judgments did not place Roberts on probation for Count V; neither the court nor the parties corrected the omission of Count V and the original judgment was completely replaced by the amended judgment; (2) the sentencing court failed to enter findings of fact that the amount of restitution ordered was one that Roberts could afford and the manner of payment was reasonable; and (3) the circuit court did not abuse its discretion in imposing consecutive sentences upon Roberts because its decision was based upon a desire to achieve retribution, deterrence, and incapacitation.

THEREFORE, IT IS HEREBY ORDERED that the circuit court's sentence as to Counts I-IV and VI is vacated and the case is remanded for re-sentencing. Judgment revoking probation as to Count V is vacated. Inasmuch as there is no valid judgment and sentence as to Count V, the matter is remanded to the Circuit Court of the Third Circuit for disposition as it sees fit.

DATED: Honolulu, Hawai'i, January 16, 2002.

On the briefs:

Cindy A. L. Goodness, Deputy
Public Defender, for
defendant-appellant

Diane A. Noda, Deputy
Prosecuting Attorney, for
plaintiff-appellee