

NO. 23809

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

PETER JACKSON, Defendant-Appellant.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-CR. NO. 00-01-1075)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Peter Jackson appeals from the family court of the first circuit's September 25, 2000 judgment of conviction and sentence.¹ Specifically, Jackson argues that: (1) Hawai'i Revised Statutes (HRS) § 707-733(1)(a) (1993) is unconstitutionally vague; (2) HRS § 707-733(1)(a) is unconstitutionally overbroad; (3) the family court erred in refusing to correct the constitutional infirmities in its instructions to the jury; and (4) HRS chapter 846E (Supp. 2001) is unconstitutional.

Upon carefully reviewing the record and the briefs submitted by the parties, and having given due consideration to the arguments advocated and the issues raised, we affirm the family court's judgment of conviction and sentence. Specifically, we hold that: (1) HRS § 707-733(1)(a) is not

¹ The Honorable Michael P. Wilson presided over this matter.

unconstitutionally vague because the phrase "sexual contact by compulsion" as used in HRS § 707-733(1) (a) "gives the person of ordinary intelligence a reasonable opportunity to know what conduct is prohibited." State v. Richie, 88 Hawai'i 19, 31, 960 P.2d 1227, 1239 (1998); (2) Jackson does not have standing to raise a constitutional overbreadth challenge because "[a] person to whom a statute may be constitutionally applied cannot challenge the statute on the ground that it may conceivably be applied unconstitutionally to others." State v. Gaylord, 78 Hawai'i 127, 142, 890 P.2d 1167, 1182 (1995) (citations and internal quotation signals omitted) (alteration in original). In convicting Jackson of placing his penis on his daughter's body and placing his hand on his daughter's breast, the jury found the complainant's version of events credible and Jackson's version of events incredible. Jackson's conduct is not constitutionally protected, such that he does not have standing to raise an overbreadth claim; (3) the family court did not err in instructing the jury. HRS § 707-733(1) (a) is neither vague nor unconstitutionally overbroad as applied to Jackson, such that the family court did not err in refusing to limit the scope of HRS § 707-733(1) (a) in instructing the jury; and (4) whether Jackson has standing to contest the constitutionality of HRS chapter 846E is unclear because Jackson's sentence did not specifically include a requirement that Jackson comply with HRS chapter 846E.

HRS § 641-11 (1993) provides that “[t]he sentence of the court in a criminal case shall be the judgment,” and Hawai‘i Rules of Appellate Procedure (HRAP) Rule 4(b)(1) provides that “[i]n a criminal case, the notice of appeal shall be filed in the circuit, district, or family COURT [sic] within 30 days after the entry of the judgment or order appealed from.” However, even if Jackson does have standing to contest this issue, we would nevertheless affirm the family court’s judgment of conviction and sentence. As to Jackson’s due process arguments, we have already held that a sex offender such as Jackson is “entitled to notice and an opportunity to be heard prior to public notification of his status as a sex offender.” State v. Bani, 97 Hawai‘i 285, 298, 36 P.3d 1255, 1268 (2001). Similarly, we have also already held that if a sex offender such as Jackson wishes to challenge the lifetime registration component of the Hawai‘i sex offender registration statute, he must “file a petition to institute a special proceeding before the court.” State v. Guidry, 2004 WL 1759149 at *11 (Hawai‘i Aug. 06, 2004). As to Jackson’s argument that there is no rational basis for HRS chapter 846E, this court has already held that “any infirmity with respect to the rational basis requirement is obviated by our holding that due process requires that a hearing must be provided[.]” Guidry at *17. And although Jackson also argues that HRS chapter 846E violates his right to privacy and his right to be free from cruel and unusual

punishment, he presents no discernable arguments as to how his rights were violated. Consequently, even if this court were to reach these issues, these points would be deemed waived on appeal. HRAP Rule 28(b)(7) ("Points not argued may be deemed waived."); see also Guidry at *14. Therefore,

IT IS HEREBY ORDERED that the family court's September 25, 2000 judgment of conviction and sentence is affirmed.

DATED: Honolulu, Hawai'i, August 30, 2004.

On the briefs:

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for defendant-appellant
Peter Jackson

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State of Hawai'i