

NO. 23937

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

STYRAN RIVERA, Defendant-Appellant.

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CR. NO. 00-1-0029)

SUMMARY DISPOSITION ORDER

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

In the Circuit Court of the First Circuit, before the Honorable Victoria S. Marks, defendant-appellant Styran Rivera pled guilty to two counts of murder in the second degree, in violation of Hawai'i Revised Statutes (HRS) § 707-701.5 (1993).<sup>1</sup> On appeal, Rivera argues that the circuit court erred by: (1) denying his motion to withdraw his guilty plea; (2) sentencing him to two consecutive life terms with the possibility of parole; (3) failing to comply with Hawai'i Rules of Penal Procedure

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<sup>1</sup> HRS § 707-701.5 states in pertinent part:

(1) Except as provided in section 707-701, a person commits the offense of murder in the second degree if the person intentionally or knowingly causes the death of another person.

(2) Murder in the second degree is a felony for which the defendant shall be sentenced to imprisonment as provided in section 706-656.

(HRPP) Rule 11(e) (3) (2000);<sup>2</sup> and (4) allowing the prosecution to breach the plea agreement by moving for consecutive sentencing.

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 by the parties, we hold that: (1) Rivera failed to present any evidence or discernible argument regarding changed circumstances or new information and expressly admitted guilt and, therefore, was not entitled to withdraw his guilty pleas based upon alleged changed circumstances or new information; (2) the circuit court engaged Rivera in a colloquy, pursuant to HRPP Rule 11(c) and (d) (2000),<sup>3</sup> fully informing him of his constitutional rights before he entered his guilty pleas; (3) any alleged misrepresentations

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<sup>2</sup> Cited in full infra.

<sup>3</sup> HRPP Rule 11(c) and (d) provides:

(c) Advise to defendant. The court shall not accept a plea of guilty or nolo contendere without first addressing the defendant personally in open court and determining that he understands the following:

(1) the nature of the charge to which the plea is offered; and

(2) the maximum penalty provided by law, and the maximum sentence or extended term of imprisonment, which may be imposed for the offense to which the plea is offered; and

(3) that he has the right to plead not guilty, or to persist in that plea if it has already been made; and

(4) that if he pleads guilty or nolo contendere there will not be a further trial of any kind, so that by pleading guilty or nolo contendere he waives the right to a trial; and

(5) that if he is not a citizen of the United States, a conviction of the offense for which he has been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

(d) Insuring that the plea is voluntary. The court shall not accept a plea of guilty or nolo contendere without first addressing the defendant personally in open court and determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from any plea agreement.

by Rivera's attorney, Peter E. Roberts, regarding Rivera's potential sentence were cured by the court's colloquy and did not affect the knowing, voluntary, and intelligent nature of Rivera's plea; (4) Roberts' assessment of Robert McGuire, Jr. as a potential witness for the prosecution did not affect Rivera's understanding of his constitutional rights or the knowing, voluntary, and intelligent nature of his pleas; (5) the circuit court did not abuse its discretion in sentencing Rivera to two consecutive life terms with the possibility of parole; (6) the circuit court did not err in accepting Rivera's guilty pleas because the record demonstrates that he was informed that the court was not bound by the plea agreement; and (7) the prosecution's efforts to seek consecutive sentencing did not violate the terms of the written plea agreement. Therefore,

IT IS HEREBY ORDERED that the November 9, 2000 judgment of conviction and sentence from which this appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, February 25, 2002.

On the briefs:

Dana S. Ishibashi,  
for defendant-appellant

Loren J. Thomas,  
Deputy Prosecuting Attorney,  
for plaintiff-appellee