

NO. 24032

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

JERRY MONTERO, Defendant-Appellant

APPEAL FROM THE FIFTH CIRCUIT COURT
(CR. NO. 97-0192)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Jerry Montero appeals from the judgment of the circuit court of the fifth circuit, the Honorable George M. Masuoka presiding, and the sentence of the circuit court of the first circuit, the Honorable Clifford L. Nakea presiding, convicting Montero of three counts of sexual assault in the third degree, in violation of Hawai'i Revised Statutes (HRS) § 707-732(1)(b) (1993) and sentencing Montero to five years of imprisonment to run consecutively to a sentence on an earlier conviction. On appeal, Montero argues that the trial court erred when it failed to obtain a valid waiver of Montero's right to a jury trial and that his due process rights were violated by a sentence imposed by a court other than the trial court and that, even if that court had authority to impose a sentence, it abused its discretion by sentencing Montero to consecutive terms. The prosecution agrees that the trial court failed to obtain a valid waiver of the right to a jury trial. Montero and the prosecution ask this court to vacate the judgment of conviction and sentence of the circuit court of the fifth circuit and remand the case for a new trial.

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 note

the record does not reflect that Montero voluntarily waived his right to a jury trial. See State v. Ibuos, 75 Haw. 118, 121, 857 P.2d 576, 578 (1993). We therefore vacate the judgment of conviction, and sentence and remand the case for a new trial. Because the case is remanded for a new trial, we do not address Montero's other points of error.

THEREFORE, IT IS HEREBY ORDERED that the circuit court's judgment of conviction and sentence is vacated and the case is remanded for a new trial.

DATED: Honolulu, Hawai'i, June 27, 2002.

On the briefs:

Rose Anne Fletcher, Deputy
Public Defender, for
defendant-appellant

Tracy Murakami, Deputy
Prosecuting Attorney,
for plaintiff-appellee