

NO. 24721

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

ANTHONY ROBERTS, Defendant-Appellant

APPEAL FROM THE SECOND CIRCUIT COURT
(CR. NO. 00-1-0646(3))

SUMMARY DISPOSITION ORDER

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

Pursuant to the entry of no contest pleas, defendant-appellant Anthony Roberts now appeals from his conviction of and sentence for: (1) burglary in the first degree, in violation of Hawai'i Revised Statutes (HRS) § 708-810(1)(c) (1993); (2) unlawful entry into a motor vehicle, in violation of HRS § 708-836.5 (1998); (3) theft in the third degree, in violation of HRS § 708-832(1)(a) (1993); (4) promoting a dangerous drug in the third degree, in violation of HRS § 712-1243(1) (1993); and (5) unlawful possession of drug paraphernalia, in violation of HRS § 329-43.5(a) (1993).¹ On appeal, Roberts claims that:

(1) the circuit court erred by denying his motion to withdraw the

¹ The judgment of conviction and sentence was entered on October 30, 2001 in the circuit court of the second circuit, the Honorable Joseph Cardoza presiding.

no contest pleas, pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 32(d); and (2) he was denied his constitutional right to effective assistance of counsel in entering into the plea agreement.

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 resolve each of Roberts's contentions as follows:

First, we hold that the circuit court did not abuse its discretion in denying Roberts's motion to withdraw his no contest pleas. Roberts argues that his pleas were not knowing and voluntary because, at the time they were tendered, he did not realize that, as a consequence of his plea, he would be rendered ineligible for the drug court program.

Our independent review of the record supports the circuit court's conclusion that Roberts was provided with the requisite advice, pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 11(c) and (d), necessary to ensure that his plea was knowing and voluntary. See State v. Merino, 81 Hawai'i 198, 224-25, 915 P.2d 672, 698-99 (1996). At the time he tendered his pleas, Roberts realized he was subject to a mandatory minimum and that such a sentence might adversely impact on his eligibility for the drug court program. Moreover, Roberts presented no evidence that his plea agreement rendered him ineligible for

consideration in the drug court program. Accordingly, the circuit court did not abuse its discretion in concluding that Roberts failed to present a "fair and just reason" for withdrawing his pleas. Id.

Second, we hold that Roberts's claim of ineffective assistance of counsel is without merit. Roberts argues that he tendered his no contest pleas based on his trial attorney's representation that, by doing so, he would become eligible, or at least be considered, for participation in the drug court program. Roberts has failed to present any evidence that his plea precludes him from being considered for the program. Consequently, he has failed to point to a specific error or omission capable of supporting his ineffective assistance of counsel claim. State v. Silva, 75 Haw. 419, 429, 864 P.2d 583, 593 (1993). Accordingly,

IT IS HEREBY ORDERED that the second circuit court's Judgment of Conviction and Sentence filed October 30, 2001 & Findings of Fact and Conclusions of Law filed November 2, 2001 are affirmed.

DATED: Honolulu, Hawai'i, August 9, 2002.

On the briefs:

Kyle B. Coffman,
for defendant-appellant

Tracy A. Jones, First
Deputy Prosecuting Attorney,
for plaintiff-appellee