

\*\*\* NOT FOR PUBLICATION \*\*\*

NO. 25116

IN THE SUPREME COURT OF THE STATE OF HAWAII

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STATE OF HAWAII, Plaintiff-Appellee

vs.

JOEL SANDERS, Defendant-Appellant

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CR. NO. 00-1-0901)

SUMMARY DISPOSITION ORDER

By: Moon, C.J., Levinson, Nakayama, and Acoba, JJ.  
and Circuit Judge Ibarra, assigned by reason of vacancy)

Defendant-appellant Joel Sanders appeals from the April 26, 2002 judgment of the circuit court of the first circuit, the Honorable Richard K. Perkins presiding, entered upon Sanders's no contest plea to the following charges: (1) robbery in the first degree, in violation of HRS § 708-840(1)(b)(ii) (Supp. 2002)<sup>1</sup> (Count I); (2) place to keep loaded firearm, in violation of HRS § 134-6(c) and (e) (Supp. 2002)<sup>2</sup> (Count II); and

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<sup>1</sup> HRS § 708-840(1)(b)(ii) provides in relevant part:

(1) A person commits the offense of robbery in the first degree if, in the course of committing theft:

    . . . .  
(b) The person is armed with a dangerous instrument and:

    . . . .  
(ii) The person threatens the imminent use of force against the person of anyone who is present with intent to compel acquiescence to the taking of or escaping with the property.

<sup>2</sup> HRS § 134-6 provides in relevant part:

(c) Except as provided in sections 134-5 and 134-9, all firearms and ammunition shall be confined to the possessor's place of business, residence, or sojourn; provided that it shall be lawful to carry unloaded firearms or ammunition or both in an enclosed container from the place of purchase to the purchaser's place of business, residence, or sojourn, or between these places upon change of place of business, residence, or sojourn, or between these places and the following: a place of repair; a target range; a licensed dealer's place of business; an organized,  
(continued...)

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(3) burglary in the first degree, in violation of HRS § 708-810(1)(c) (1993)<sup>3</sup> (Count III). Based on the family court's waiver of jurisdiction, the circuit court sentenced Sanders as an adult to twenty years' imprisonment for Count I and ten years' imprisonment each for Counts II and III, all terms to run concurrently.

On appeal, Sanders argues that the circuit court lacked jurisdiction to criminally adjudicate him because: (1) the family court's written order failed to set forth specific findings, as required by Hawai'i Family Court Rules (HFRCR) Rule 129<sup>4</sup> and In re John Doe, 61 Haw. 167, 172, 598 P.2d 176, 178 (1979) ("[A]ll waiver orders filed after the issuance of this opinion are required to conform to Rule 129."); and (2) the family court was not warranted in waiving jurisdiction, as

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<sup>2</sup>(...continued)  
scheduled firearms show or exhibit; a place of formal hunter or firearm use training or instruction; or a police station. "Enclosed container" means a rigidly constructed receptacle, or a commercially manufactured gun case, or the equivalent thereof that completely encloses the firearm.

. . . .  
(e) Any person violating subsection (a) or (b) shall be guilty of a class A felony. Any person violating this section by carrying or possessing a loaded firearm or by carrying or possessing a loaded or unloaded pistol or revolver without a license issued as provided in section 134-9 shall be guilty of a class B felony. Any person violating this section by carrying or possessing an unloaded firearm, other than a pistol or revolver, shall be guilty of a class C felony.

<sup>3</sup> HRS § 708-810(1)(c) provides in relevant part:

(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.

<sup>4</sup> HFRCR Rule 129 provides in relevant part that "[i]f, after a transfer or waiver hearing, the court orders the case to be transferred to criminal court, it shall make specific findings supporting its decision."

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pursuant to HRS § 571-22(a) (Supp. 2002),<sup>5</sup> Sanders (a) was committable to an institution for the mentally defective or mentally ill, (b) would have been treatable at a juvenile institution, and (c) did not pose a threat to the community, such that judicial restraint for a period extending beyond his minority was required.

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, we hold that the circuit court did not lack jurisdiction, as: (1) despite the family court's failure to comply with the mandatory requirement that all written orders waiving jurisdiction set forth specific findings pursuant to HFCR Rule 129, see In re John Doe, 61 Haw. at 172, 598 P.2d at 178 ("[A]ll waiver orders filed after the issuance of this opinion are required to conform to Rule 129."), this error was harmless, inasmuch as Sanders's right to a "full investigation and hearing" under HRS § 571-22 was not violated; and (2) the family court did not abuse its discretion by waiving jurisdiction pursuant to HRS § 571-22(a), inasmuch as HRS § 571-22(a) is a disjunctive statute, requiring the presence of one of

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<sup>5</sup> HRS § 571-22(a) provides in relevant part:

(a) The court may waive jurisdiction and order a minor or adult held for criminal proceedings after full investigation and hearing where the person during the person's minority, but on or after the person's sixteenth birthday, is alleged to have committed an act that would constitute a felony if committed by an adult and the court finds that:

- (1) There is no evidence the person is committable to an institution for the mentally defective or retarded or the mentally ill;
- (2) The person is not treatable in any available institution or facility within the State designed for the care and treatment of children; or
- (3) The safety of the community requires that the person be subject to judicial restraint for a period extending beyond the person's minority.

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three factors, and in this case, there was substantial evidence that, under HRS § 571-22(a)(3), adequate protection of the public required judicial restraint for a period extending beyond Sanders's minority. Therefore,

IT IS HEREBY ORDERED that the judgment and sentence from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, July 16, 2003.

On the briefs:

Mitsuhiro Murakawa,  
Deputy Public Defender,  
for defendant-appellant

Mark Yuen,  
Deputy Prosecuting Attorney,  
for plaintiff-appellee