

\*\*\* NOT FOR PUBLICATION \*\*\*

NO. 25425

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

ARMAN B. JOHNSON, Defendant-Appellant.

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APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT  
(Report No. H-06685H)

SUMMARY DISPOSITION ORDER

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

The defendant-appellant Arman B. Johnson appeals from the judgment of the district court of the third circuit, the Honorable Jeffrey Choi presiding, filed on October 6, 2003, convicting him of and sentencing him for the offense of criminal contempt of court, in violation of Hawai'i Revised Statutes (HRS) § 710-1077(1)(g) (1993). On appeal, Johnson contends that the district court erred inasmuch as: (1) there was insufficient evidence adduced at trial to support his conviction of the offense of criminal contempt of court; (2) the district court failed to administer the pretrial advisement regarding Johnson's right to testify or not to testify as mandated by State v. Lewis, 94 Hawai'i 292, 12 P.3d 1233 (2000); and (3) the district court failed to enter written findings pursuant to HRS § 710-1077(5) (1993).

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 resolve Johnson's appeal as follows.

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The district court could reasonably infer that Johnson knowingly failed to make payment or appear in court on December 12, 2001, as ordered by the official district court notice he knowingly received on October 10, 2001. State v. Batson, 73 Haw. 236, 248, 831 P.2d 924, 931, reconsideration denied, 73 Haw. 625, 834 P.2d 1315 (1992); see also HRS § 702-206(2) (1993) (defining "knowingly"). Viewing the evidence in the light most favorable to the prosecution, we hold that there was sufficient evidence to support a prima facie case such that a reasonable mind might fairly conclude beyond a reasonable doubt that Johnson committed the offense of criminal contempt of court, in violation of HRS § 710-1077(1)(g). See State v. Martinez, 101 Hawai'i 332, 338-39, 68 P.3d 606, 612-13 (2003). There is no evidence in the transcript of proceedings that the district court took judicial notice of facts not admitted into evidence, as Johnson contends, or that it relied on those facts to convict Johnson of criminal contempt of court. See Hawai'i Rules of Evidence (HRE) Rule 201(c) and (f) (1993); see also State v. Kotis, 91 Hawai'i 319, 328-329, 984 P.2d 78, 87-88 (1999).

The district court did not reversibly err in failing to give Johnson the prior-to-trial advisement because Johnson chose to testify on his own behalf. Lewis, 94 Hawai'i at 296, 12 P.3d at 1237 (holding that "Tachibana v. State, 79 Hawai'i 226, 900 P.2d 1293 (1995)] does not require that the [trial] court engage in the [prior-to-trial] colloquy if the defendant chooses to testify in his or her own behalf").

HRS § 710-1077(5) (1993) mandates that "[w]henver a person is convicted of criminal contempt of court or sentenced therefor, the particular circumstances of the offense shall be

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set forth in the judgment and in the order or warrant of commitment." See also State v. Hicks, 71 Haw. 564, 798 P.2d 906 (1990); State v. Lloyd, 88 Hawai'i 188, 190-91, 964 P.2d 642, 644-45 (1998). Therefore,

IT IS HEREBY ORDERED that the judgment from which the appeal is taken is vacated and remanded for the entry of written findings consistent with HRS § 710-1077(5) and this court's decisions in Hicks and Lloyd.

DATED: Honolulu, Hawai'i, March 16, 2004.

On the briefs:

Cindy A.L. Goodness, deputy  
public defender, for  
the defendant-appellant  
Arman B. Johnson

Jason M. Skier, deputy  
prosecuting attorney, for  
the plaintiff-appellee  
State of Hawai'i