

*** NOT FOR PUBLICATION ***

NO. 25510

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

ALOMALIETOA SUA, Defendant-Appellant.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 00-1-2546)

SUMMARY DISPOSITION ORDER

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

The defendant-appellant Alomalietoa Sua appeals from the judgment of the circuit court of the first circuit, the Honorable Karen S.S. Ahn presiding, filed on November 7, 2002 convicting him of and sentencing him for the offenses of kidnapping, in violation of Hawai'i Revised Statutes (HRS) § 707-720(1)(b) (1993), and promoting prison contraband in the first degree, in violation of HRS § 710-1022(1)(b) (1993). On appeal, Sua contends, inter alia, that the circuit court violated his constitutional right to due process by denying his repeated motions for a full mental examination by a three-member panel of examiners in order to determine his penal responsibility at the time of the alleged offenses.¹

¹ Sua further argues: (1) that the circuit court "denied [his] right to a fair trial when it denied" his motions for a private investigator, for hybrid representation, and for court assistance; (2) that the circuit court "denied his right to a fair trial when he was forced to proceed despite his pain and blurred vision"; (3) that the circuit court erred in admitting into evidence the September 20, 2000 videotape that was "never properly

(continued...)

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The prosecution counters that "there was no rational basis for convening a panel of examiners[,]" inasmuch as Sua's "purposeful conduct was not indicative of a lack of a substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law[.]"

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 Sua's appeal as follows:

Sua has failed to demonstrate a rational basis in the record for the convening of a three-member panel of examiners, pursuant to HRS § 704-404 (1993 & Supp. 2004). The two letters Sua wrote prior to the commission of the offenses indicating his intent to commit suicide, and his contention that he was suffering from a serious depression that prompted the suicide attempt are insufficient to command the exercise of the circuit court's discretion to order a three-member panel of examiners. The circuit court appointed a psychologist to preliminarily evaluate Sua's penal responsibility and to "examine and report on [his] physical and mental condition." The psychologist reported that Sua's "cognitive and volitional capacities at the time of the alleged offenses were not substantially impaired as a result of a mental disorder, but may have been impaired due to voluntary

¹(...continued)
authenticated prior to its admission"; (4) that the circuit court "erred in denying his request for discovery of Department of Public Safety records"; and (5) that the circuit court "erred in refusing to allow him to present his witnesses in the most effective manner." We hold that the foregoing points on appeal are without merit.

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crystal methamphetamine intoxication." Therefore, the circuit court determined that what was before it was insufficient to require a three-member panel of examiners to further review Sua's competency. Cf. State v. Tyrrell, 60 Haw. 17, 586 P.2d 1028 (1978) (holding that there was no abuse of the court's discretionary power in refusing to appoint a panel of examiners where court had ordered examination by single psychiatrist who found defendant fit to proceed). See also State v. Castro, 93 Hawai'i 424, 426 n.1, 5 P.3d 414, 416 n.1 (2000) ("the determination of a defendant's competency is a matter that the legislature has left to the sound discretion of the trial court").

As such, the circuit court did not abuse its discretion in refusing to stay the proceedings and appoint a three-member panel of examiners to review Sua's mental competency. Therefore,

IT IS HEREBY ORDERED that the judgment of the circuit court is affirmed.

DATED: Honolulu, Hawai'i, February 17, 2005.

On the briefs:

Dwight C.H. Lum, for
the defendant-appellant
Alomalietoa Sua

Daniel Shimizu, deputy
prosecuting attorney, for
the plaintiff-appellee
State of Hawai'i