

NO. 23279

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
GREGORIO MARBOU, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 99-0260)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Lim and Foley, JJ.)

Defendant-Appellant Gregorio Marbou (Marbou) appeals from the Judgment entered in the Circuit Court of the First Circuit (circuit court) on March 9, 2000, following a bench trial¹ at which Marbou was convicted of one count of Sexual Assault in the Third Degree, in violation of Hawai'i Revised Statutes (HRS) § 707-732² (1993).

Upon careful review of 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 Marbou's points of error as follows:

¹The Honorable Reynaldo D. Gaulty presided.

²Marbou was charged with HRS § 707-732(1)(e); however, the March 9, 2000 Judgment states that Marbou was convicted of HRS § "707-0732-87" (no such statute exists). The circuit court's December 17, 1999, Findings of Fact, Conclusions of Law and Adjudication states that Marbou was convicted of "HRS § 707-732." The circuit court is hereby ordered to file an Amended Judgment to set forth the correct HRS section under which Marbou was convicted.

(1) Marbou argues that insufficient evidence supported the circuit court's finding that Marbou waived his right to trial counsel. Marbou's argument has no merit. Prior to granting Marbou's request to discharge his fourth court-appointed trial counsel, the circuit court engaged Marbou in a comprehensive on-the-record colloquy that informed Marbou of the consequences of his actions, including the requirement that he proceed pro se in the absence of a legitimate reason to discharge counsel. State v. Soares, 81 Hawai'i 332, 355, 916 P.2d 1233, 1256 (App. 1996).

(2) Marbou argues that the circuit court denied his right to a speedy trial and violated Hawai'i Rules of Penal Procedure (HRPP) Rule 48. Marbou's argument has no merit because the circuit court properly excluded periods of time caused by Marbou's motions in its computation for trial commencement pursuant to HRPP Rule 48.³ State v. Samonte, 83 Hawai'i 507, 928 P.2d 1 (1996).

(3) Marbou argues that evidence adduced at trial was legally insufficient to support a conviction under HRS § 707-732(1)(e). This argument also lacks merit. The complaining witness provided substantial evidence that Marbou grabbed her breast and prevented her from getting up. State v. Richie, 88 Hawai'i 19, 33, 960 P.2d 1227, 1241 (1998). The circuit court

³The Honorable Michael A. Town issued the "Findings of Fact, Conclusions of Law and Order Denying Defendant's Motion to Dismiss Charge for Violation of Rule 48 of HRPP" filed November 1, 1999.

found the testimony of the complaining witness more credible than Marbou's testimony. "It is well-settled that an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the province of the trier of fact." State v. Jenkins, 93 Hawai'i 87, 101, 997 P.2d 13, 27 (2000) (internal quotation marks and brackets omitted) (quoting State v. Mattiello, 90 Hawai'i 255, 259, 978 P.2d 693, 697 (1999)).

Therefore,

IT IS HEREBY ORDERED that the March 9, 2000 Judgment of the circuit court is affirmed.

DATED: Honolulu, Hawai'i, May 6, 2002.

On the briefs:

Gregorio Marbou,
defendant-appellant pro-se.

Chief Judge

Donn Fudo,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.

Associate Judge

Associate Judge