

NO. 23492

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
EMYBEL S. VALMOJA, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIFTH CIRCUIT
(FC-Cr. No. 99-0164)

SUMMARY DISPOSITION ORDER

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

In this appeal, Defendant-Appellant Emybel S. Valmoja (Valmoja) contends that the Family Court of the Fifth Circuit (the family court) erred in denying her motion to withdraw her December 30, 1999 no-contest plea, which had been filed on March 10, 2000, prior to her March 13, 2000 sentencing hearing. Valmoja claims that she is originally from the Philippines, English is her second language, and the "facts are uncontroverted" that she

did not understand what she was doing during her plea, she did not understand the plea she entered and wanted to fight the charges against her. She did not assault her boyfriend. In anticipation of her plea, her lawyer told her something that was factually inaccurate, i.e., if she went to trial on 12-30-99 and was found guilty, she would spend the next night, New Year's Eve 2000, in jail.

(Record citation omitted.)

Our review of the record on appeal indicates that Valmoja was originally charged on July 22, 1999 with physical abuse of a family or household member, in violation of Hawaii

Revised Statutes (HRS) § 709-906 (1993 & Supp. 2000), and criminal property damage in the fourth degree, in violation of HRS § 708-823 (1993). On December 30, 1999, the date set for Valmoja's trial on the foregoing charges, Valmoja informed the family court that pursuant to an agreement with Plaintiff-Appellee State of Hawai'i (the State), she had agreed to change her plea to no contest, in exchange for the State dismissing the criminal property damage charge against her.

The record further reveals that prior to accepting Valmoja's oral and written no-contest plea, the family court^{1/} engaged in a lengthy colloquy with Valmoja to determine whether Valmoja understood what she was pleading to, what rights she was waiving, and the consequences and voluntariness of her plea. Additionally, at the hearing on the motion by Valmoja to withdraw her no-contest plea, Valmoja admitted that when she entered her no-contest plea, she did not request a court interpreter or express any confusion as to what was transpiring at the hearing. Valmoja also admitted that she "understood English or [could] read and write English"; had been working at a job which required her to register guests and answer phones in English; had learned English in high school; and had attended two years of college, where the courses were taught in English. Finally, we note that at the hearing on Valmoja's motion to withdraw her plea, Valmoja

^{1/} Per diem judge Joseph Kobayashi presided over the hearing at which Defendant-Appellant Emybel Valmoja accepted a plea offer from Plaintiff-Appellee State of Hawai'i and agreed to plead no contest to abuse of a family or household member.

did not corroborate her general claim that she was advised by her prior attorney that she would spend New Year's eve in jail if she failed to plead no contest to the abuse-of-a-family-or-household-member charge.

Based on our review of the record and the relevant statutes and case law, we affirm the judgment entered by family court judge Calvin K. Murashige on June 22, 2000, convicting and sentencing Valmoja for abuse of a family or household member.

DATED: Honolulu, Hawai'i, January 18, 2002.

On the briefs:

John H. Murphy for
defendant-appellant.

Tracy Murakami, Deputy
Prosecuting Attorney,
County of Kauai, for
plaintiff-appellee.