

NO. 23873

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
LINDSAY L. LINDSEY, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT  
(REPORT NO. G-26670)

MEMORANDUM OPINION

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

Defendant-Appellant Lindsay L. Lindsey (Lindsey), who identifies himself as the "Executive Minister, Agent in Fact of the Office of the Hawaiian Affairs," appeals from the October 24, 2000 Judgment of the District Court of the Third Circuit. We affirm in part and vacate and remand in part.

Lindsey initially appeared in court on April 24, 2000, and, after Lindsey was orally charged, the case was continued to allow Lindsey to obtain an attorney. When Lindsey appeared in court on April 25, 2000, he advised the court that he is "a native Hawaiian" and "a non U S citizen" and wanted time to obtain an attorney to challenge the court's jurisdiction "pre-arraignment." District Court Judge Joseph P. Florendo, Jr., declined to postpone the trial setting, entered not guilty pleas for Lindsey, and set the case for trial.

When Lindsey appeared in court on July 21, 2000, without counsel, Plaintiff-Appellee State of Hawai'i (the State) agreed to Lindsey's request for a continuance. The court continued the trial to August 30, 2000.

At the trial on August 30, 2000, per diem District Court Judge Elizabeth A. Strance was the trial judge. Attorney Betsy R. Stuelke appeared as standby counsel for Lindsey. The Deputy Prosecuting Attorney orally charged Lindsey as follows:

Mr. Lindsey, you are charged that on or about the 30th day of January, 1998, in Kona, County and State of Hawaii, you did knowingly resist the process, injunction, or other mandate of the Court by failing to appear as directed, thereby committing the offense of [Criminal] Contempt of Court, in violation of Section 710-1077(1)(g), of the Hawaii Revised Statutes, as amended.

Mr. Lindsey, you're also charged that on or about the 6th day of August, 1999, in Kona, County and State of Hawaii, you did knowingly resist the process, injunction, or other mandate of the Court by failing to appear as directed, thereby committing the offense of [Criminal] Contempt of Court, in violation of Section 710-1077(1)(g), of the Hawaii Revised Statutes, as amended.

And, Mr. Lindsey, you are also charged that on or about the 30th day of June, 1999, in Kona, County and State of Hawaii, you did knowingly resist the process, injunction, or other mandate of the Court by failing to appear as directed, thereby committing the offense of Contempt, in violation of Section 710-1077(1)(g), of the Hawaii Revised Statutes, as amended.

All three charges pertained to Lindsey's failure to appear in court after having received notices to appear. The court found Lindsey not guilty of the charge relating to January 30, 1998. The State dismissed the charge relating to June 30, 1999. The court found Lindsey guilty of the charge relating to August 6, 1999, and sentenced him to ten hours of community service, a "criminal injury fee" of \$25, and a bench

warrant processing fee of \$50. The court ordered Lindsey to complete his sentence prior to 1:00 p.m., on February 26, 2001, or to appear in court at that time.

On November 16, 2000, the court granted Lindsey's Motion to Stay Execution of Sentence, pending appeal.

#### DISCUSSION

##### A.

Hawai'i Rules of Penal Procedure (HRPP) Rule 10.1 states as follows:

**Initial appearance before the court.**

Upon the initial appearance of the defendant before the court, the court shall:

- (a) be satisfied that he is informed of the charge against him;
- (b) inform him that he is not required to make a statement and that any statement made by him may be used against him;
- (c) advise him of his right to counsel;
- (d) allow him reasonable time and opportunity to consult counsel; and
- (e) admit him to bail as provided by law or in these rules.

##### 1.

Lindsey contends that the court failed to comply with the requirement imposed by HRPP Rule 10.1(b) to inform Lindsey that he is not required to make a statement and that any statement made by him may be used against him.

The record shows that the court did not comply with HRPP Rule 10.1(b) until August 30, 2000. The record also shows,

however, that Lindsey's substantial rights were not affected and the delay was harmless. HRPP Rule 52.

2.

Lindsey contends that the court failed to comply with HRPP Rule 10.1(c) when it failed to inform him of his right to counsel, in order to assure that Lindsey understood the charge against him. Upon a review of the record, we conclude that this point lacks a basis in fact.

3.

Lindsey contends that the court failed to comply with HRPP Rule 10.1(d) when it failed to allow Lindsey reasonable time and opportunity to consult counsel. Upon a review of the record, we conclude that this point lacks a basis in fact.

4.

Lindsey contends that the court failed to comply with HRPP Rule 10.1(a) when it failed to be satisfied that Lindsey is informed of the charge against him. Upon a review of the record, we conclude that this point lacks a basis in fact.

5.

Lindsey contends that the court failed to comply with HRPP Rule 5(b)(1) when it failed to furnish a copy of such charge or proceed in accord with section 5(b) prior to arraignment. Upon a review of the record, we conclude that this point lacks a

basis in fact. The court properly used its HRPP Rule 5(b)(1) authority permitting a "statement of the oral charge to the defendant[.]"

6.

Lindsey contends that the court failed to comply with HRPP Rule 11(a)(1) when "AT ARRAIGNMENT IT FAILED TO CALL FOR THE DEFENDANT TO PLEAD THERETO, AND INSTEAD SUMMARILY (OR ARBITRARILY) IMPOSED A PLEA OF NOT GUILTY AND TRIAL SETTING." Upon a review of the record, we conclude that this point lacks a basis in fact. The court properly used its HRPP Rule 11(a)(1) authority that "[i]f a defendant refuses to plead . . . , the court shall enter a plea of not guilty."

B.

Lindsey notes that the charge pertaining to August 6, 1999, as read to him on April 24, 2000, alleged that he "knowingly disobeyed the mandate of court by failing to appear in the District Court of the Third Circuit" whereas the charge as read to him on August 30, 2000, alleged that he "did knowingly resist the process, injunction, or other mandate of the Court by failing to appear as directed[.]" Although he did not object at trial, Lindsey contends on appeal that the change on the day of trial from the word "disobeyed" to the word "resist" denied him "due process to prepare for trial on this charge[.]" We disagree.

Hawaii Revised Statutes (HRS) § 710-1077(1)(g) (1993) states that a person commits the offense of criminal contempt if "[t]he person knowingly disobeys or resists the process, injunction, or other mandate of a court." In the context of the charge, we conclude that the change from the word "disobeyed" to "resist" is insignificant and not a basis for a conclusion that the charge was materially changed or that he was misled.

Lindsey also contends that there was insufficient evidence to support the allegation that he "did . . . resist." We disagree. There is substantial evidence that Lindsey "did knowingly resist the process, injunction, or other mandate of the Court by failing to appear as directed[.]"

C.

At the trial, Lindsey introduced an identification card identifying him as the Executive Minister of the Interim Provisional Government of the Kingdom of Hawai'i. Repeating the defense he asserted on his first appearance in court and throughout this case, Lindsey contends that the court failed to require the State to satisfy its burden of proving in personam and subject matter jurisdiction. In Lindsey's words,

At every appearance of every hearing in this matter, [Lindsey] identified himself and is acknowledged as the natural-person, and the one who, on the dates: April 25, 2000, July 21, 2000, and August 30, 2000, submitted credentials confirming the fact that [Lindsey] is a Hawaiian-Kingdom-Citizen and interim-governing-agent in-advocacy and the Executive-Minister For The Office Of The Hawaiian-Affairs Non-U.S.-Citizens/Hawaiian-Nationals.

. . . .

As the Holder-In-Due-Course Of The Proper-Claim And Legitimate Trusteeship Of The Office Of The Hawaiian-Affairs, [Lindsey] as an agent-in-fact: Hawaiian Beneficiary of such social-polity-status, having no citizenship or electorate-constituency with the State of Hawaii or the United States governments; outside the necessary-in-comity-transition activities and protected-reservations and preservations of the all-rights and dignities existing inherently by the investiture of the holy spirit dwelling within the defendant.

Upon a review of the record, we conclude that the State satisfied its burden of proving personal and subject matter jurisdiction in this case. State v. Lee, 90 Hawai'i 130, 976 P.2d 444 (1999); State v. Lorenzo, 77 Hawai'i 219, 883 P.2d 641 (App. 1994).

D.

Lindsey contends that the court violated HRS § 710-077(5) when it "failed to fully set forth in the judgment the particular circumstances of the offense of criminal contempt." We agree.

In State v. Hicks, 71 Haw. 564, 567, 798 P.2d 906, 907-08 (1990), the Hawai'i Supreme Court stated that

whenever any person is convicted of criminal contempt of court and sentenced, HRS § 710-1077(5) mandates the trial court to set forth written findings of the particular circumstances of the offense in the judgment and in the order or warrant of commitment. Accordingly, the judgment below is vacated and this case is remanded[.]

CONCLUSION

Accordingly, we vacate the district court's October 24, 2000 Judgment and remand for compliance with State v. Hicks, supra. In all other respects, we affirm.

DATED: Honolulu, Hawai'i, March 8, 2002.

On the briefs:

Alfred P. Lerma, Jr.  
for Defendant-Appellant.

Chief Judge

Linda L. Walton,  
Deputy Prosecuting Attorney,  
County of Hawai'i,  
for Plaintiff-Appellee.

Associate Judge

Associate Judge