

NO. 23902

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
ANGEL INOUE, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT  
(CR. NO. 98-2238)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Angel Inoue (Inoue) appeals from the Judgment<sup>1</sup> entered on October 13, 2000 in the Circuit Court of the First Circuit (circuit court).<sup>2</sup> Inoue was convicted of Kidnapping, in violation of Hawaii Revised Statutes (HRS) § 707-720(1)(d) (1993).<sup>3</sup>

On appeal, Inoue contends (1) the circuit court erred in allowing evidence of Inoue's prior convictions, (2) the

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<sup>1</sup>The Judgment states that Inoue both pled to and was found guilty of Kidnapping; the record clearly states that Inoue did not enter a plea subsequent to arraignment and plea to this charge. The circuit court is hereby ordered to file an Amended Judgment deleting the language under the section "CHARGE(S) TO WHICH DEFENDANT PLED."

<sup>2</sup>The Honorable Frances Q.F. Wong presided.

<sup>3</sup>HRS § 707-720(1)(d) provides:

**§707-720 Kidnapping.** (1) A person commits the offense of kidnapping if the person intentionally or knowingly restrains another person with intent to:

- . . . .  
(d) Inflict bodily injury upon that person or subject that person to a sexual offense[.]

circuit court abused its discretion in granting the State's motion for extended sentencing, and (3) Inoue was denied effective assistance of counsel.

We disagree with Inoue's contentions and affirm the October 13, 2000 Judgment of the circuit court.

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 Inoue's points of error as follows:

(1) Inoue contends the circuit court erred in allowing the prosecutor to ask Inoue questions regarding a 1990 conviction for Kidnapping and a 1999 conviction for Sexual Assault in the Third Degree. Hawai'i Rules of Evidence Rule 404(b) states that evidence of other crimes may be "admissible where such evidence is probative of another fact that is of consequence to the determination of the action, such as proof of . . . intent[.]" The circuit court did not abuse its discretion in allowing evidence of prior similar crimes as proof of intent. State v. Kealoha, 95 Hawai'i 365, 380, 22 P.3d 1012, 1027 (App. 2000).

Furthermore, the circuit court instructed the jury on three occasions that such evidence may be considered only on the issue of Inoue's intent, and not as evidence of Inoue's character. The judicial system "assumes that jurors will follow instructions and scrupulously apply the law contained in those

instruction[s] to the facts found." State v. Timoteo, 87 Hawai'i 108, 118, 952 P.2d 865, 875 (1997) (quoting State v. Delisle, 162 Vt. 293, 304, 648 A.2d 632, 639 (1994)).

(2) Inoue contends the circuit court judge "abdicated her adjudicative function and responsibility when she permitted another judge to preside over the evidentiary hearing on extended term sentencing while she observed the hearing from the gallery." We hold that Inoue was not denied "the full panoply of the relevant protections which due process guarantees in state criminal proceedings." State v. Kamae, 56 Haw. 628, 636, 548 P.2d 632, 637 (1976) (internal quotation marks omitted).

Furthermore, at the hearings conducted on July 21, 2000, September 11, 2000 and October 13, 2000, Inoue did not object to the consolidated proceedings.<sup>4</sup> "A judgment ordinarily will not be reversed upon a legal theory not raised by the appellant in the court below." Earl M. Jorgensen Co. v. Mark Const., Inc., 56 Haw. 466, 475, 540 P.2d 978, 985 (1975).

(3) Inoue contends that he received ineffective assistance of counsel. Inoue fails to show that defense counsel's assistance fell below the range of competence demanded of criminal defense attorneys or resulted in the withdrawal or

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<sup>4</sup>Consolidated with Criminal No. 98-0880 for Inoue's extended sentencing hearing.

substantial impairment of a potentially meritorious defense. Dan v. State, 76 Hawai'i 423, 427, 879 P.2d 528, 532 (1994).

Therefore,

IT IS HEREBY ORDERED that the October 13, 2000 Judgment is affirmed.

DATED: Honolulu, Hawai'i, May 16, 2002.

On the briefs:

Richard D. Gronna  
for defendant-appellant.

Chief Judge

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

Associate Judge