

NO. 23903

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. 98-0880)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Angel Inoue (Inoue) was indicted on April 21, 1998, for Sexual Assault in the First Degree (Count I), in violation of Hawaii Revised Statutes (HRS) § 707-730(1)(b), and Sexual Assault in the Third Degree (Counts II and III), in violation of HRS § 707-732(1)(b). Following a jury trial,¹ Inoue was convicted on Count I of the included offense of Sexual Assault in the Third Degree, in violation of HRS § 707-732, and was convicted as charged on Counts II and III.² Inoue appeals

¹The Honorable Richard K. Perkins presided.

²HRS § 707-732 (1993) provides:

§707-732 Sexual assault in the third degree. (1) A person commits the offense of sexual assault in the third degree if:

- (a) The person recklessly subjects another person to an act of sexual penetration by compulsion;
- (b) The person knowingly subjects to sexual contact another person who is less than fourteen years old or causes such a person to have sexual contact with the person;
- (c) The person knowingly subjects to sexual contact another person who is mentally defective, mentally incapacitated, or physically helpless, or causes such a person to have sexual contact with the actor; or
- (d) The person, while employed in a state correctional facility, knowingly subjects to sexual contact an imprisoned person or causes such person to have sexual contact with the actor;

(continued...)

from the Judgment³ filed September 25, 2000 in the Circuit Court of the First Circuit (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 there was insufficient evidence to convict him of Counts I and II and the circuit court, therefore, erred in denying his motion for judgment of acquittal. The record indicates there was substantial evidence to support the jury's verdict. Regarding Count I, a six-year-old child's testimony that Inoue touched her "private part" and the place where "shishi" comes out was credible evidence that Inoue subjected the child to sexual contact. As to Count II, a six-year-old child's testimony that Inoue touched her breast was credible evidence that Inoue subjected the child to sexual contact. "[I]t is well-settled that an appellate court will not

^{2/}(...continued)

(e) The person knowingly, by strong compulsion, has sexual contact with another person or causes another person to have sexual contact with the actor; provided that paragraphs (b), (c), and (d) shall not be construed to prohibit practitioners licensed under chapter 453, 455, or 460, from performing any act within their respective practices.

(2) Sexual assault in the third degree is a class C felony.

^{3/}The Judgment states that Inoue both pled to and was found guilty of Counts I through III; the record clearly states that Inoue did not enter a plea subsequent to arraignment and plea to any of the charges. The circuit court is hereby ordered to file an Amended Judgment deleting the language under the section "CHARGE(S) TO WHICH DEFENDANT PLED."

pass upon issues dependent upon the credibility of witnesses and the weight of the evidence[.]" Domingo v. State, 76 Hawai'i 237, 242, 873 P.2d 775, 780 (1994) (internal quotation marks omitted).

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

Furthermore, as Inoue concedes, he has not supported his ineffective assistance claim with sworn statements or affidavits of proffered witnesses; therefore his claim must fail. State v. Richie, 88 Hawai'i 19, 39, 960 P.2d 1227, 1247 (1998).

Therefore,

IT IS HEREBY ORDERED that the September 25, 2000 Judgment of the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, May 14, 2002.

On the briefs:

Sarah Courageous
for defendant-appellant.

Chief Judge

Bryan K. Sano,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.

Associate Judge

Associate Judge