

NO. 23904

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.  
CHRISTOPHER GRINDLING, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE SECOND CIRCUIT  
(FC-CR NO. 00-1-0277)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Christopher Grindling (Grindling) appeals from the Judgment entered in the Family Court of the Second Circuit (family court) on September 19, 2000. Following a bench trial,<sup>1</sup> Grindling was convicted of one count of Violation of an Order for Protection, in violation of Hawaii Revised Statutes (HRS) § 586-11 (Supp. 2001).

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 Grindling's points of error as follows:

(1) Grindling argues that insufficient evidence supported the family court's finding that he violated the

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<sup>1</sup>The Honorable Eric G. Romanchak presided.

Protective Order (Order), issued pursuant to HRS Chapter 586, by failing to complete the domestic abuse (PACT) program as required by the Order. Grindling's argument has no merit. The family court found the testimony of the State's witnesses credible. "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)). Substantial credible evidence established that Grindling intentionally or knowingly left the PACT program interview after fifteen minutes and failed to complete the PACT program, thus violating the Order. Considering this evidence in the strongest light for the State, we conclude there is substantial evidence to support the conclusion of the trier of fact. State v. Richie, 88 Hawai'i 19, 33, 960 P.2d 1227, 1241 (1998).

(2) Grindling contends the family court improperly denied his motion for a judgment of acquittal, in which Grindling argued that the State failed to prove beyond a reasonable doubt all of the elements of the charge under HRS § 586-11.

Grindling's argument has no merit. The family court relied on substantial evidence as to every material element of the offense charged. Substantial evidence as to every material element of the offense charged is credible evidence which is

of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion. Under such a review, we give full play to the right of the fact finder to determine credibility, weigh the evidence, and draw justifiable inferences of fact.

State v. Timoteo, 87 Hawai'i 108, 113, 952 P.2d 865, 870 (1997) (quoting State v. Jhun, 83 Hawai'i 472, 481, 927 P.2d 1355, 1364 (1996)).

(3) Grindling argues that the family court erred in permitting the State to amend the charge in the original complaint, in violation of Hawai'i Rules of Penal Procedure (HRPP) Rule 7(f). Hawai'i Rules of Penal Procedure Rule 7(f) provides:

**Rule 7. The indictment, complaint and oral charge.**

. . . .  
(f) *Amendment*. The court may permit a charge other than an indictment to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

Grindling's claim fails because the amended complaint charged him with violating the same offense as the original complaint (Violation of an Order for Protection). Additionally, Grindling fails to demonstrate that he suffered any prejudice. HRPP Rule 7; see State v. Matautia, 81 Hawai'i 76, 81, 912 P.2d 573, 578 (App. 1996).

(4) Grindling contends the family court reversibly erred in convicting him of violating the Order because the Order was unconstitutionally vague in violation of his due process rights. Grindling did not raise this issue below. See HRPP

Rule 52(b) ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."); State v. Davia, 87 Hawai'i 249, 253, 953 P.2d 1347, 1351 (1998) (an appellate court "may recognize plain error when the error committed affects substantial rights of the defendant" (internal quotation marks omitted)). Grindling has failed to show how his substantial rights were affected by the absence in the Order of the rules dated July 5, 1998 governing the PACT program.

(5) Grindling argues his right to effective assistance of counsel was violated when his trial counsel failed to focus on the absence of the rules governing the PACT program regarding attendance and participation. Grindling fails to satisfy the burden of establishing ineffective assistance of counsel:

1) that there were specific errors or omissions reflecting counsel's lack of skill, judgment, or diligence; and 2) that such errors or omissions resulted in either the withdrawal or substantial impairment of a potentially meritorious defense.

Barnett v. State, 91 Hawai'i 20, 27, 979 P.2d 1046, 1053 (1999) (quoting State v. Fukusaku, 85 Hawai'i 462, 480, 946 P.2d 32, 50 (1997)). Grindling fails to meet the burden of showing that "there were specific errors or omissions reflecting counsel's lack of skill, judgment, or diligence," Barnett, 91 Hawai'i at 27, 979 P.2d at 1053, where his trial counsel moved the family court for a judgment of acquittal based on insufficient evidence.

Therefore,

IT IS HEREBY ORDERED that the September 19, 2000  
Judgment of the family court is affirmed.

DATED: Honolulu, Hawai'i, January 24, 2003.

On the briefs:

Georgia K. McMillen  
for defendant-appellant.

Chief Judge

Arleen Y. Watanabe,  
Deputy Prosecuting Attorney,  
County of Maui,  
for plaintiff-appellee.

Associate Judge

Associate Judge