

NO. 24016

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
ROBERT J. F. CHRISTIANO, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
(Cr. No. 99-154172)

SUMMARY DISPOSITION ORDER

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

In this appeal, Defendant-Appellant Robert J. F. Christiano (Christiano) urges us to vacate the Judgment entered by the District Court of the First Circuit (the district court) on November 28, 2000, convicting and sentencing him for the offense of harassment, in violation of Hawaii Revised Statutes § 711-1106(1)(a) (1993), on two bases: (1) he did not knowingly, voluntarily, and intelligently waive his right to be represented by counsel at trial; and (2) he did not knowingly, voluntarily, and intelligently waive his right to be represented by counsel at sentencing.

We agree with Christiano's first contention. Our review of the record reveals that although Christiano appeared

before the district court three<sup>1</sup> times for pre-trial arraignment and plea hearings, he was never apprised by the district court of the specific nature of the harassment charge against him. It was not until just prior to trial, after Christiano had already waived his right to counsel, that a deputy prosecutor informed Christiano, for the first time, of the particular subsection of HRS § 711-1106 that he was charged with violating and the elements of the harassment offense he was accused of committing. In In re Doe, 77 Hawai'i 46, 50, 881 P.2d 533, 537 (1994), the

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<sup>1</sup> Defendant-Appellant Robert J. F. Christiano (Christiano) appeared with a deputy public defender before the District Court of the First Circuit (the district court), Judge Tenney Tongg (Judge Tongg) presiding, on May 5, 1999. At the outset of the hearing, although Christiano was never orally charged, the deputy public defender entered a plea of not guilty for Christiano. Judge Tongg then scheduled Christiano's case for trial in the normal course, and the case was set for arraignment, plea, and trial on July 1, 1999, at 1:30 p.m.

On July 1, 1999, Christiano was not present for his scheduled hearing and trial, and a bench warrant was issued for his arrest. On August 23, 2000, Christiano appeared without legal counsel before district court judge Fa'auuga To'oto'o for arraignment on two charges: criminal contempt of court for failing to appear in court on July 1, 1999; and the initial harassment charge. At this hearing, Christiano was told only that "the main case is the harassment charge. And this is a petty misdemeanor, up to, fine up to a thousand dollars and thirty days jail so you can plead not guilty, guilty or no contest, it's up to you."

On October 17, 2000, Christiano appeared without counsel before district court judge Colette Y. Garibaldi (Judge Garibaldi). Before engaging Christiano in a waiver-of-counsel colloquy, Judge Garibaldi stated, in relevant part:

Okay, . . . this is -- you have two charges, one is for a contempt charge for failing to appear in court; the other is a harassment. Both charges are petty misdemeanors. The maximum penalty is 30 days in jail and a one thousand dollar fine.

Hawai'i Supreme Court held, under similar circumstances, that a defendant's "waiver of her right to counsel was not knowing and voluntary because the family court failed to set forth the nature of the assault charge against her. Specifically, the court neither read the petition, nor explained the elements necessary to establish the charge of assault." (Footnote omitted.)

Although the defendant in Doe had not raised the family court's failure to explain the nature of the assault as an error with regard to her waiver of counsel, the supreme court sua sponte concluded that the family court's failure constituted plain error affecting the defendant's substantial rights.

Because Christiano was not informed of the nature of the harassment charge against him, the specific statutory offense he was accused of committing, and the elements of the offense he was charged with committing, we conclude that Christiano's waiver of counsel could not have been made knowingly, voluntarily, and intelligently.

Accordingly, we vacate the judgment below and remand for further proceedings consistent with this summary disposition

order. Our disposition of this appeal renders it unnecessary to address Christiano's second contention on appeal.

DATED: Honolulu, Hawai'i, August 5, 2002.

On the briefs:

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State of Hawai'i, for  
defendant-appellant.

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