

NOT FOR PUBLICATION

NOS. 24175, 24176, AND 24177

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v. BRUCE
WYKES, aka BRUCE K. WYKES, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NOS. 93-2317, 97-0292, and 99-1725)

SUMMARY DISPOSITION ORDER

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

In this consolidated appeal, Defendant-Appellant Bruce Wykes (Wykes) appeals from the following orders and judgment entered in the Circuit Court of the First Circuit (the circuit court) by the Honorable Dan Kochi:

In Cr. No. 93-2317, the March 16, 2001 Order of Resentencing, Revocation of Probation;

In Cr. No. 97-0292, the March 16, 2001 Order of Resentencing, Revocation of Probation; and

In Cr. No. 99-1725, the March 16, 2001 Judgment.

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 Wykes's points of error as follows:

(1) Wykes contends the circuit court abused its discretion in denying his motions for withdrawal and substitution of counsel, depriving him of his constitutional right to counsel.

The circuit court conducted a "penetrating and comprehensive examination of the defendant on the record, in order to ascertain the bases for the defendant's request[s]." State v. Kossman, 101 Hawai'i 112, 119, 63 P.3d 420, 427 (App. 2003) (internal quotation marks omitted). As Wykes failed to demonstrate good cause warranting substitution of counsel, the circuit court's denials of the motions for withdrawal and substitution of counsel were not abuses of discretion that prejudiced Wykes by amounting to unconstitutional denials of the right to effective assistance of counsel. Id.

(2) Wykes contends he was entitled to withdraw his guilty plea. Wykes failed to present a "fair and just reason" for his request. Additionally, the circuit court found that the State relied upon the guilty plea to its substantial prejudice. State v. Topasna, 94 Hawai'i 444, 451, 16 P.3d 849, 856 (App. 2000).

[T]he defendant is entitled to withdraw the guilty plea if

(1) the defendant has not entered the plea knowingly, intelligently, and voluntarily; (2) there has been no undue delay in moving to withdraw the plea; and (3) the prosecution has not otherwise met its burden of establishing that it relied on the plea to its substantial prejudice.

Id. at 452, 16 P.3d at 857 (quoting State v. Merino, 81 Hawai'i 198, 224, 915 P.2d 672, 698 (1996)). Wykes fails to meet the definition of a "fair and just reason" warranting withdrawal of a guilty plea as set forth in Topasna because (1) on November 15, 2000, pursuant to Hawai'i Rules of Penal Procedure Rule 11, the

circuit court engaged Wykes in an on-the-record colloquy in open court regarding the consequences of Wykes's guilty plea, establishing that Wykes understood his rights and that by entering his guilty plea, he knowingly and voluntarily waived his rights; (2) on January 18, 2001, approximately two months after entering into the plea agreement, Wykes's defense counsel informed the circuit court that Wykes requested a withdrawal of his guilty plea; and (3) the circuit court found that the State met its burden of establishing that it relied on the plea to its substantial prejudice. Therefore, the circuit court did not abuse its discretion in denying Wykes's motion to withdraw his guilty plea. Topasna, 94 Hawai'i at 463, 16 P.3d at 868.

Accordingly, the March 16, 2001 Order of Resentencing, Revocation of Probation in Cr. No. 93-2317; the March 16, 2001 Order of Resentencing, Revocation of Probation in Cr. No. 97-0292; and the March 16, 2001 Judgment in Cr. No. 99-1725 are affirmed.

DATED: Honolulu, Hawai'i, March 31, 2003.

On the briefs:

Keith S. Akena
for defendant-appellant.

Chief Judge

Daniel H. Shimizu,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.

Associate Judge

Associate Judge