

NO. 24447

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
STANFORD NEIGHBORS, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT,
PUNA DIVISION
(REPORT NO. G-58042)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Stanford Neighbors (Neighbors) appeals from the June 26, 2001 Judgment, as amended by Judgment filed August 15, 2001, of the District Court of the Third Circuit, Puna Division (district court).¹ Neighbors pled no contest to one count of Harassment, in violation of Hawaii Revised Statutes (HRS) § 711-1106 (Supp. 2002). He was sentenced to ten days in jail and ordered, in part, to pay \$25.00 to Criminal Injuries Compensation Fund and a \$75.00 probation fee, to obtain anger management and counseling and substance abuse assessments and treatment, and to have no contact with complainant and her family. Neighbors' sentence was stayed pending appeal.

Neighbors contends the district court erred in sentencing him to jail instead of probation because (1) the

¹The Honorable Jeffrey Choi presided.

district court relied on statements in the presentence report that Neighbors threatened and harassed complainant and her family after his plea of no contest, and (2) the district court denied him his constitutional right to a fair trial because it forced him to choose between challenging the statements in the presentence report or remaining silent.

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 Neighbors' points of error as follows:

(1) Hawaii Revised Statutes § 706-602(1)(e) (1993) provides that the presentence report shall include any matters "that the reporting person or agency deems relevant." Statements that Neighbors threatened and harassed complainant and her family in violation of court-ordered terms and conditions of Neighbors' supervised release were relevant to sentencing Neighbors for harassment of complainant and therefore appropriately included in the presentence report.

(2) Neighbors choose not to call any witnesses at his sentencing hearing and did not challenge statements in the presentence report that he threatened and harassed complainant and her family after his no contest plea to harassment of complainant. Neighbors' only argument was that the statements were irrelevant to his sentencing for harassment of complainant.

Neighbors was not, therefore, forced to choose between challenging the statements in the presentence report or remaining silent. Neighbors could have challenged the statements as untrue, but instead chose to challenge them as irrelevant. There is no indication that the statements in the presentence report were "materially untrue or unreliable information" or that Neighbors was deprived "of fundamental fairness or of any right of confrontation or cross-examination." In re Dinson, 58 Haw. 522, 527, 574 P.2d 119, 123 (1978) (internal quotation marks omitted).

Accordingly, the June 26, 2001 Judgment, as amended by the August 15, 2001 Judgment, of the District Court of the Third Circuit, Puna Division, is affirmed.

DATED: Honolulu, Hawai'i, February 27, 2003.

On the briefs:

Jennifer D.K. Yamashiro,
Deputy Public Defender,
for defendant-appellant.

Chief Judge

Jason M. Skier,
Deputy Prosecuting Attorney,
County of Hawai'i,
for plaintiff-appellee.

Associate Judge

Associate Judge