

NO. 24817

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
EDWARD AMINA, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT,  
EWA DIVISION  
(CR. NO. 00419610)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Edward Amina (Amina) appeals the Judgment filed on October 13, 2003 in the District Court of the First Circuit, Ewa Division (district court).<sup>1</sup>

Amina was charged with and convicted of Sexual Assault in the Fourth Degree, in violation of Hawaii Revised Statutes § 707-733(1) (a) (1993).<sup>2</sup>

---

<sup>1</sup> The Honorable James Dannenberg presided.

<sup>2</sup> Hawaii Revised Statutes (HRS) § 707-733 (1993) provides in relevant part:

**§707-733 Sexual assault in the fourth degree.** (1) A person commits the offense of sexual assault in the fourth degree if:

(a) The person knowingly subjects another person to sexual contact by compulsion or causes another person to have sexual contact with the actor by compulsion[.]

. . . .

(2) Sexual assault in the fourth degree is a misdemeanor.

(3) Whenever a court sentences a defendant for an offense under this section, the court may order the defendant to submit to a pre-sentence mental and medical examination pursuant to section 706-603.

On appeal,<sup>3</sup> Amina contends (1) the district court erred by finding that Amina waived his right to a trial by jury, (2) the district court unduly limited Amina's right to cross-examine a witness, (3) the district court failed to provide Amina with an evidentiary hearing, (4) the district court was biased so as to deprive him of a fair trial, and (5) there was insufficient evidence to convict him of Sexual Assault in the Fourth Degree.

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 Amina's points of error as follows:

(1) Amina claims the district court erred by finding that he waived his right to a trial by jury. The district court did not err by determining that Amina waived in writing his right to a trial by jury. HRS § 806-61 (1993).

(2) Amina claims that his right to cross-examine the complaining witness was unduly restricted. Amina argues that he was not allowed to show bias on the part of the complaining witness. Amina's counsel failed to make an offer of proof or state a proper purpose for the questions at trial, and Amina is thus barred on appeal from claiming that the district court

---

<sup>3</sup>Amina's opening brief fails to comply with Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(3) in failing to include specific page numbers from transcripts, especially in his points of error. The opening brief also contains erroneous page numbers from citations and transcripts. Amina's counsel is warned that future non-compliance with HRAP 28 may result in sanctions against him.

improperly curtailed the questioning of the complaining witness during cross-examination. State v. Estrada, 69 Haw. 204, 220, 738 P.2d 812, 823-24 (1987).

(3) Amina claims the district court plainly erred by failing to give him an evidentiary hearing with respect to his claim of ineffective assistance of counsel. Amina cannot claim it was error to grant his motion to appoint private counsel (based on a claim of ineffective assistance of counsel) without an evidentiary hearing, when he was the moving and prevailing party on the issue. Amina did not raise the issue of ineffective assistance of counsel in conjunction with his motion to withdraw his waiver of jury trial. Amina has not demonstrated that a potentially meritorious defense was withdrawn or substantially impaired by his trial counsel when Amina waived his right to jury trial. State v. Jones, 96 Hawai'i 161, 166, 29 P.3d 351, 356 (2001).

(4) Amina claims the district court judge was biased against him. Amina failed to establish a "personal" bias by the judge and "marked personal feelings on both sides inflicting lingering personal stings." State v. Yip, 92 Hawai'i 98, 106, 987 P.2d 996, 1004 (App. 1999) (ellipsis omitted).

(5) Amina contends there was insufficient evidence to convict him of Sexual Assault in the Fourth Degree. There was sufficient evidence to convict Amina of Sexual Assault in the

Fourth Degree. State v. Richie, 88 Hawai'i 19, 33, 960 P.2d 1227, 1241 (1998).

Therefore,

IT IS HEREBY ORDERED that the Judgment filed on October 13, 2003 in the District Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, June 7, 2004.

On the briefs:

Gary L. Hartman  
for defendant-appellant.

Mark Yuen,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for plaintiff-appellee.

Chief Judge

Associate Judge

Associate Judge