

NOT FOR PUBLICATION

NO. 24834

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
PAUL ABRAHAM LUIZ, aka ABRAHAM P. JORDAN,
Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 48096)

SUMMARY DISPOSITION ORDER

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

Paul Abraham Luiz, a.k.a. Abraham P. Jordan, (Luiz) appeals from the "Order Denying Petitioner's Application for Conditional Release, and/or Partial Conditional Release, or Unescorted Off-Grounds Passes" (Order Denying Conditional Release) filed December 12, 2001 in the Circuit Court of the First Circuit (circuit court).¹ We affirm.

On August 9, 2000, Luiz filed an "Application for Conditional Release and Motion for Appointment of Examiners" (Application for Release). Luiz was seeking release from the Hawai'i State Hospital (HSH), a state psychiatric facility. Luiz had been confined to the HSH since 1976, following his acquittal for murder and several charges of rape on the grounds of mental

¹ The Honorable Reynaldo D. Graulty presided.

disease, disorder or defect.² After conducting a lengthy hearing, pursuant to Hawaii Revised Statutes (HRS) §§ 704-414 and 704-415, and reviewing the opinions of numerous experts, the circuit court concluded that Luiz had not proven by a preponderance of the evidence that he was no longer "mentally ill" or "dangerous." The circuit court specifically found that, based on the voluminous evidence considered by the court, "[Luiz's] diagnosis of Sexual Sadism at the time of his arrest remains the same" and "[Luiz] remains dangerous to others."

Luiz argues on appeal that:

(1) The circuit court should have allowed Luiz to DNA test the semen sample removed from the murder victim's body, which sample was allegedly relied upon by Dr. Hall, one of the experts,³ in his opinion of Luiz's dangerousness;

(2) Dr. Hall should not have been permitted to examine Luiz or Luiz's confidential medical records;

² The circumstances leading to Luiz's arrest and eventual conviction for murder are explained in the Hawai'i Supreme Court case Seibel v. City and County of Honolulu, 61 Haw. 253, 602 P.2d 532 (1979).

³ On August 1, 2000, Luiz filed a "Motion to Conduct Independent Analysis of Evidence" (Motion for Independent Analysis) to counter Luiz's diagnosis of sexual sadism by demonstrating that Luiz was not raping the victim at the time he murdered her. The circuit court heard the Motion for Independent Analysis with the August 9, 2000 Application for Release. The court denied the Motion for Independent Analysis, stating it was "not relevant" to the Motion for Release (which would depend upon an assessment of Luiz's current condition, not just his past actions). The circuit court also said the issue was a "strawman."

(3) The circuit court erred in finding "sexual sadism, by history" as a "present diagnosis" from Dr. Gitter, one of the experts;

(4) The circuit court erred in ruling that Luiz produced no evidence addressing the controls, interventions, conditions, and approaches described by three of the experts, Drs. Merrill, Gitter, and Jacobs; and

(5) The circuit court erred in finding that Luiz did not prove by a preponderance of the evidence that he is no longer mentally ill or dangerous (Luiz contends he offered sufficient evidence to meet his burden).

After a careful review of the record and the arguments presented by the parties, we conclude that Luiz is incorrect on all counts. We resolve each of Luiz's arguments as follows:

(1) A trial court's decision to exclude evidence under Hawaii Rules of Evidence (HRE) Rules 401 and 403 is reviewed under the right/wrong standard and for an abuse of discretion, respectively. State v. St. Clair, 101 Hawai'i 280, 286, 67 P.3d 779, 785 (2003); State v. Cordeiro, 99 Hawai'i 390, 404, 56 P.3d 692, 706 (2002). The circuit court did not err in denying the Motion for Independent Analysis⁴ because the evidence sought was

⁴ The circuit court appears to have denied the motion on Hawaii Rules of Evidence Rules 401 and 403 grounds. In denying the motion, the circuit court stated: "It is not necessary. It's not relevant. I would agree with the characterization that it is a strawman."

irrelevant to the determination of Luiz's present dangerousness and confusing to the central issue at hand.

(2) Any error the circuit court may have made in ordering Dr. Hall to examine Luiz before the circuit court's determination that the court was not "satisfied" with the initial examiners' reports pursuant to HRS § 704-415 was harmless beyond a reasonable doubt, in that there is no indication the circuit court used, reviewed, or admitted any such evidence before the hearing at which the court determined that the three initial reports were insufficient. Furthermore, Luiz voluntarily conceded to Dr. Hall's examination and review of Luiz's medical records. Finally, there is no question that the circuit court had the power to order Dr. Hall's examination, following the determination that the court was not "satisfied" with the initial reports.

(3) The circuit court accurately represented Dr. Gitter's diagnosis in its Order Denying Conditional Release.

(4) & (5) Given the voluminous evidence presented before the circuit court, we conclude there was no error in the circuit court's determination that Luiz failed to prove by a preponderance of the evidence that he was no longer mentally ill or dangerous. See State v. Miller, 84 Hawai'i 269, 933 P.2d 606 (1997).

NOT FOR PUBLICATION

Therefore,

IT IS HEREBY ORDERED that the "Order Denying
Petitioner's Application for Conditional Release, and/or Partial
Conditional Release, or Unescorted Off-Grounds Passes" filed
December 12, 2001 in the Circuit Court of the First Circuit is
affirmed.

DATED: Honolulu, Hawai'i, June 28, 2004.

On the briefs:

Peter A. Ross
for defendant-appellant.

Chief Judge

Jeffrey M. Albert,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.

Associate Judge

Associate Judge