

**NOT FOR PUBLICATION**

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NO. 24868

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.  
HARRY H. IKEDA, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIFTH CIRCUIT  
(Cr. No. LC01-494)

MEMORANDUM OPINION

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

Defendant-Appellant Harry H. Ikeda (Ikeda) appeals from the January 18, 2002 Judgment and Sentence, entered by the District Court of the Fifth Circuit (the district court), Judge Frank D. Rothschild presiding, convicting Ikeda of and sentencing him for three counts of violating Hawaii Revised Statutes (HRS) § 231-35 (Supp. 2000). We affirm.

BACKGROUND

On February 14, 2001, Ikeda was charged with three counts of violating HRS § 231-35 (Supp. 2000).<sup>1</sup> Count I charged

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<sup>1</sup> At the time Defendant-Appellant Harry H. Ikeda (Ikeda) was charged, Hawaii Revised Statutes § 231-35 (Supp. 2000) stated, in relevant part:

**Wilful failure to file return, supply information, or secure a license.** Any person required to make a return, make a report, keep any records, supply any information, or secure any license required under title 14, who wilfully fails to make the return, make the report, keep the records, supply the information, or secure the license, at the time or times required by law, shall in addition to other penalties provided by law, be guilty of a misdemeanor and upon conviction, shall be subject to one or any combination of the following:

- (1) A fine of not more than \$25,000;
- (2) Imprisonment of not more than one year; or
- (3) Probation[.]

him with wilfully failing to secure a general excise tax license. Counts II and III charged him with wilfully failing to file general excise tax returns for the calendar years ending December 31, 1998 and December 31, 1999, respectively.

At the bench trial on October 9, 2001, Plaintiff-Appellee State of Hawai'i showed through witnesses, documentary evidence, and stipulations of the parties that: (1) Ikeda applied for a general excise tax license in 1976; (2) on December 15, 1998, Ikeda filed a request to cancel his general excise tax license as of December 11, 1998; (3) Ikeda conducted business as a barber after December 11, 1998 without a general excise tax license; and (4) although Ikeda filed annual general excise tax returns for the 1995, 1996, and 1997 calendar years, he did not file annual general excise tax returns for the 1998 and 1999 calendar years.

The district court orally convicted Ikeda on all three counts,<sup>2</sup> stating as follows:

Now, if you want to -- and I have a sense from all of this that you are trying to test the law. I would imagine that's the case. I would imagine that there were not -- you probably had a difficult time getting a lawyer to represent you because in your definition a good lawyer would be a lawyer who would see the law from your vantage point and view the law from your vantage point and then rally behind your cause and assist you with this. But it defies logic, as I see it, it defies the law as I see it, and I would imagine it would be pretty hard to find somebody to come forward and try to analyze the law as you've analyzed. And it may be, you know, I don't know whether you'd -- whether that's something in the newspaper or you took a course or you read something in the internet. I can't imagine what it was that changed your mind after years of paying these taxes, as your brother [a barber who worked in the same shop] does, and as the other barbers do, all of a sudden to think that somehow that you had the answer that you were going to be able to figure out a way to avoid paying this tax and avoid filing -- having a license and filing returns.

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<sup>2</sup> Ikeda represented himself both at trial and on appeal.

And we'll see what other people have to say about this, but from my perspective, given the evidence that I've seen in the documents and the testimony, you're absolutely guilty of all three counts.

Thereafter, on January 18, 2002, the district court sentenced Ikeda to serve one year in jail, with all but forty-five days suspended, and to pay a fine of \$25,000, with \$10,000 suspended for a year. Ikeda timely filed a Notice of Appeal on January 22, 2002.

DISCUSSION

On appeal, Ikeda does not deny that he was a barber doing business in Lihue, Kauai without a general excise tax license during the 1998 and 1999 calendar years. He also does not deny that he failed to file general excise tax returns for those years. However, he claims that the district court erred by convicting him because:

(1) "The imposition of the state general excise license upon the natural person in the exercise of a common occupation violates the due process clause of the fourteenth amendment because it unduly burdens a fundamental right" (stylistic capitalizations omitted); and

(2) "There exists no evidence that [he] 'willfully' intended to violate a legal known duty because he relied upon prior supreme court decisions and state tax agency's tacit agreement before terminating his general excise license in the good faith belief that state general excise tax statute under [HRS] chapter 237 excluded him, the natural person, in the exercise of a fundamental right." (Stylistic capitalizations omitted.)

A.

HRS § 237-13(6) (A) (Supp. 2000) explains, as it did when Ikeda was charged, that the general excise tax applies to every person engaged in a "service business or calling":

**Imposition of tax.** There is hereby levied and shall be assessed and collected annually privilege taxes against persons on account of their business and other activities in the State measured by the application of rates against values of products, gross proceeds of sales, or gross income, whichever is specified, as follows:

. . . .

(6) Tax on service business.

(A) Upon every person engaging or continuing within the State in any service business or calling including professional services not otherwise specifically taxed under this chapter, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the gross income of the business[.]

HRS § 237-7 (Supp. 2000) defines "[s]ervice business or calling" as follows:

"Service business or calling" includes all activities engaged in for other persons for a consideration which involve the rendering of a service, including professional services, as distinguished from the sale of tangible property or the production and sale of tangible property. "Service business or calling" does not include the services rendered by an employee to the employee's employer.

Ikeda, a barber, was clearly engaged in a "service business or calling[.]" He was self-employed and therefore did not come within the "employee" exception to the general excise tax. Under the literal language of the foregoing statutes, Ikeda was plainly required to obtain a general excise tax license and to pay general excise taxes.

Ikeda nevertheless argues that the general excise tax does not apply to him because it "unduly burdens" his constitutional right to "engage in a common occupation of life[.]" (Stylistic capitalizations omitted.) Ikeda offers no

persuasive legal authority to support this argument, and we conclude that the argument is meritless.

B.

As to Ikeda's good faith defense that he was immune from paying general excise taxes because he relied on prior supreme court decisions and the state tax department's tacit agreement before terminating his general excise tax license, we note that the elements for a successful "mistake of law" defense are set forth in HRS § 702-220 (1993), which states as follows:

**Ignorance or mistake of law; belief that conduct not legally prohibited.** In any prosecution, it shall be an affirmative defense that the defendant engaged in the conduct or caused the result alleged under the belief that the conduct or result was not legally prohibited when the defendant acts in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in:

- (1) A statute or other enactment;
- (2) A judicial decision, opinion, or judgment;
- (3) An administrative order or administrative grant of permission; or
- (4) An official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration, or enforcement of the law defining the offense.

(Emphasis added.) The Commentary to HRS § 702-220 explains that this

defense is afforded where the defendant acts in reasonable reliance on an official statement of the law afterwards determined to be erroneous. In such cases the defendant's conduct is consistent with law-abidingness. Moreover, notwithstanding the fact that official statements of the law must sometime be overruled, no social purpose would be served by discouraging reasonable reliance on them while they stand. Certainly penal liability for such reasonable reliance is inconsistent with the concept of culpability which permeates this [Penal] Code.

(Emphases added.)

In this case, Ikeda offered no evidence of any official statements of the law upon which he based his actions of refusing

to obtain a general excise tax license and to pay general excise taxes. Ikeda's defense was instead based on his erroneous interpretation of broad language mined from various federal cases. The HRS § 702-220 defense is therefore not applicable.

Affirmed.

DATED: Honolulu, Hawai'i, August 19, 2003.

On the briefs:

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defendant-appellant, pro se.

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Hawai'i for plaintiff-appellee.