

NO. 24870

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.  
STEVEN E. YOUNG, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT  
(CR. NO. 99-1786)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Steven E. Young (Young) appeals from the "Findings of Fact, Conclusions of Law and Order Denying Defendant's Motion to Set Aside Guilty Plea" filed December 31, 2001 in the Circuit Court of the First Circuit (circuit court).<sup>1</sup>

Young contends the circuit court erred when it made the following findings of fact and conclusions of law:

30. Defendant's execution of the guilty plea form, the colloquy with the Court on the record, and the fact that Defendant did not have any complaints with his counsel demonstrate that Defendant's plea was knowing, voluntary and intelligent.

31. . . . [T]he record reflects a sufficient factual basis.

. . . .

33. Defendant has failed to establish manifest injustice.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to

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<sup>1</sup>The Honorable Victoria S. Marks presided.

the arguments advanced and the issues raised by the parties, we resolve Young's points of error as follows:

- (1) **The record in this case indicates Young made a knowing, intelligent, and voluntary guilty plea.**

The circuit court followed the requirements under Hawai'i Rules of Penal Procedure (HRPP) Rule 11(c) and (d) to ensure that Young's guilty plea was knowing, intelligent, and voluntary. The circuit court colloquy indicated that Young could understand, read, and write English; was thinking clearly and feeling well; had received copies of the original charges; had spoken to his attorney about the original charges, as well as the reduced charge of Sexual Assault in the Second Degree; understood and had no questions about the charges; did not want a trial; knew there was no plea agreement with respect to sentencing; had not received any promises other than what was stated in the plea agreement; had not been pressured or threatened to change his plea; had spoken to his attorney about a trial, the evidence against him, possible defenses, and the plea agreement; was satisfied with his attorney and had no complaints about his attorney; had read and then had gone over the guilty plea form with his attorney and understood everything on the form; and had no questions about and understood everything the circuit court stated to him.

**(2) The record reflects a sufficient factual basis for Young's plea.**

Young pled guilty to the following:

Count 1: Assault in the Third Degree, in violation of Hawaii Revised Statutes (HRS) § 707-712(1)(a) (1993);

Count 2: Sexual Assault in the Third Degree, in violation of HRS § 707-732(1)(a) (1993); and

Count 3: A reduced charge of Sexual Assault in the Second Degree, in violation of HRS § 707-731(1)(a) (Supp. 2001).

At the change of plea hearing, Young acknowledged that he had read the Guilty Plea form; had gone over the form with his attorney; had signed the middle of the second page of the form after reading it and reviewing it with his attorney; had no questions about the form, anything the judge had said, or anything regarding his case; and had understood everything on the form and everything the judge had said. Young entered guilty pleas to the three counts and then signed the bottom of the Guilty Plea form in open court. Young's attorney had signed the Guilty Plea form underneath the heading "Certificate of Counsel," which stated:

As counsel for defendant and as an officer of the Court, I certify that I have read and explained fully the foregoing, that I believe that the defendant understands the document in its entirety, that the statements contained herein are in conformity with my understanding of the defendant's position, that I believe that the defendant's

plea is made voluntarily and with intelligent understanding of the nature of the charge and possible consequences, and that the defendant signed the foregoing in my presence.

The Guilty Plea form stated in paragraph 3:

3. I have received a written copy of the original charge in this case. My lawyer has explained the charges to me. I understand the original charge against me. I told my lawyer all the facts I know about the case. He/she discussed with me the government's evidence against me, and advised me of the facts which the government must prove in order to convict me and of the possible defenses which I might have.

Paragraph 4 of the Guilty Plea noted, "My lawyer has also explained to me the reduced charge which the government has agreed to charge me with, instead of the original charge."

In paragraph 5, Young checked the box next to "I plead guilty because, after discussing all the evidence and receiving advice on the law from my lawyer, I believe that I am guilty."

Paragraph 6 stated in part that "I plead in this manner because . . . [o]n September 9, 1999 I scuffled with my girlfriend . . . and had sexual relations with her after she initially said no."

At the change of plea hearing, the following colloquy occurred:

THE COURT: I want you to tell me what happened. In particular, if you'd read out loud the handwritten part of paragraph 6 [of the Guilty Plea form].

[YOUNG]: On September 9th, 1999, I guess we had a scuffle -- I had a scuffle with my girlfriend and -- it was a yes or no situation, but I guess the last word was no. And therefore, I'm guilty of it, charges against.

THE COURT: And did all of that happen in the City and County of Honolulu?

[YOUNG]: Yes, ma'am.

THE COURT: Okay. And all of that's true.

[YOUNG]: Yes, ma'am.

**(3) Young has failed to establish manifest injustice.**

Hawai'i Rules of Penal Procedure Rule 32(d) states in part that "to correct manifest injustice the court after sentence shall set aside the judgment of conviction and permit the defendant to withdraw his plea." "With regard to the withdrawal of a guilty plea, [the Hawai'i Supreme Court has] previously stated that a defendant is entitled to withdraw his or her guilty plea after imposition of sentence only upon a showing of manifest injustice." Barnett v. State, 91 Hawai'i 20, 28, 979 P.2d 1046, 1054 (1999).

Manifest injustice occurs when a defendant makes a plea involuntarily or without knowledge of the direct consequences of the plea. There is no manifest injustice when a trial court has made an affirmative showing through an on-the-record colloquy between the court and the defendant which shows that the defendant had a full understanding of what his or her plea connoted and its direct consequences.

Id. (citations omitted) (quoting State v. Nguyen, 81 Hawai'i 279, 292, 916 P.2d 689, 702 (1996)).

The circuit court did not abuse its discretion "by clearly exceeding the bounds of reason or disregarding rules or principles of law or practice to the substantial detriment" of Young in finding that Young had "failed to establish manifest injustice" and in denying Young's motion to set aside his guilty plea. Nguyen, 81 Hawai'i at 292, 916 P.2d at 702.

Accordingly, the Findings of Fact, Conclusions of Law and Order Denying Defendant's Motion to Set Aside Guilty Plea filed December 31, 2001 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, October 20, 2003.

On the briefs:

Jonathan E. Burge,  
Jonathan L. Inciong  
for defendant-appellant.

Chief Judge

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

Associate Judge

Associate Judge