

NOT FOR PUBLICATION

NO. 24872

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
DANUAL E. MARTIN, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 98-1650)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Danual E. Martin (Martin) appeals the Judgment filed on January 16, 2002 in the Circuit Court of the First Circuit (circuit court).¹

Martin was charged with and convicted of Promoting a Dangerous Drug in the Third Degree in violation of Hawaii Revised Statutes (HRS) § 712-1243 (1993 & Supp. 2001).²

¹ The Honorable Wilfred K. Watanabe presided.

² Hawaii Revised Statutes (HRS) § 712-1243 (1993 & Supp. 2001) provides:

§712-1243 Promoting a dangerous drug in the third degree.

(1) A person commits the offense of promoting a dangerous drug in the third degree if the person knowingly possesses any dangerous drug in any amount.

(2) Promoting a dangerous drug in the third degree is a class C felony.

(3) Notwithstanding any law to the contrary, if the commission of the offense of promoting a dangerous drug in the third degree under this section involved the possession or distribution of methamphetamine, the person convicted shall be sentenced to an indeterminate term of imprisonment of five years with a mandatory minimum term of imprisonment, the length of which shall be not less than thirty days and not greater than two-and-a-half years, at the discretion of the sentencing court. The person convicted shall not be eligible for parole during the mandatory period of imprisonment.

On appeal, Martin contends (1) the circuit court erred by partially denying his Motion to Suppress Evidence and Statements, (2) the circuit should have suppressed Martin's statement to Officer Obara, and (3) Martin was provided with ineffective assistance of counsel.

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 Martin's points of error as follows:

(1) Martin contends the circuit court erred by partially denying his Motion to Suppress Evidence and Statements because there was no probable cause to arrest him. The circuit court did not err by partially denying Martin's Motion to Suppress Evidence and Statements. There was probable cause to arrest Martin, and the evidence seized was found as a search incident to arrest. State v. Naeole, 80 Hawai'i 419, 424, 910 P.2d 732, 737 (1996).

(2) Martin contends his statement to Officer Obara was fruit of the poisonous tree and the court should have excluded it under the principles in State v. Pebria, 85 Hawai'i 171, 938 P.2d 1190 (App. 1997). The principles set forth in Pebria do not apply to this case. Assuming arguendo that such principles do apply, Martin waived any error in admitting his statement when he agreed that it would be introduced as evidence.

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(3) Martin contends that he was provided with ineffective assistance of counsel. When viewed as a whole, the assistance provided to Martin was "within the range of competence demanded of attorneys in criminal cases." Dan v. State, 76 Hawai'i 423, 427, 879 P.2d 528, 532 (1994) (internal quotation marks and citation omitted).

THEREFORE,

It is hereby ordered that the Judgment filed on January 16, 2002 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, May 14, 2004.

On the briefs:

David Bettencourt
for defendant-appellant.

Chief Judge

Daniel H. Shimizu,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.

Associate Judge

Associate Judge