

NO. 24916

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
CHARLES LEE, Defendant-Appellant,
and SANTIAGO LEONES, JR., and LEANN FU, Defendants

APPEAL FROM THE FIFTH CIRCUIT COURT
(CR. NO. 99-0104)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Charles Lee (Lee) appeals from the January 22, 2002 Judgment of the Circuit Court of the Fifth Circuit (the circuit court).¹ Lee was charged by indictment with the following:

Count I: Promoting a Dangerous Drug in the Third Degree, in violation of Hawaii Revised Statutes (HRS) § 712-1243 (1993 & Supp. 2001);

Counts II & III: Unlawful Use of Drug Paraphernalia, in violation of HRS § 329-43.5(a) (1993); and

Count IV: Promoting a Detrimental Drug in the Third Degree, in violation of HRS § 712-1249 (1993).

After a jury trial, Lee was convicted of Counts I and II and sentenced to five years of imprisonment on each count, said sentences to run concurrently. The State dismissed

¹The Honorable Clifford L. Nakea presided.

Count III with prejudice, and the jury acquitted Lee on Count IV. On appeal, Lee argues that his conviction should be reversed and the case remanded for a new trial because he did not receive effective assistance of counsel at trial.

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 as raised by the parties, we resolve Lee's point of error as follows:

Lee contends his conviction should be reversed and the case remanded for a new trial because he did not receive effective assistance of counsel at trial in that his counsel failed to file a motion to suppress evidence obtained in violation of Lee's constitutional right to be free of unreasonable searches and seizures. Because we conclude that the search of the residence and vehicle was not in violation of Lee's rights and the evidence seized would not have been suppressed had a motion been filed by Lee's counsel, Lee has failed to demonstrate that there were "specific errors or omissions reflecting counsel's lack of skill, judgment, or diligence" that "resulted in either the withdrawal or substantial impairment of a potentially meritorious defense." State v. Jones, 96 Hawai'i 161, 166, 29 P.3d 351, 356 (2001) (internal quotation marks and citation omitted).

Accordingly,

IT IS HEREBY ORDERED that the January 22, 2002 Judgment of the Circuit Court of the Fifth Circuit is affirmed.

DATED: Honolulu, Hawai'i, December 31, 2003.

On the briefs:

Caren Dennemeyer
for defendant-appellant.

Acting Chief Judge

Craig A. De Costa,
Deputy Prosecuting Attorney,
County of Kauai,
for plaintiff-appellee.

Associate Judge

Associate Judge