

NOT FOR PUBLICATION

NO. 25264

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
KEOKI J. K. ARAUJO, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(FC-CR No. 98-403)

MEMORANDUM OPINION

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

Keoki J. K. Araujo (Araujo) appeals the July 24, 2002 order of the family court of the third circuit¹ that re-sentenced him to a five-year indeterminate term of imprisonment for terroristic threatening in the first degree,² upon the State's third successful motion for revocation of his probation.

For his sole point of error on appeal, Araujo challenges the jurisdiction of the court, based upon his assertion that he is a Native Hawaiian and a citizen of the Kingdom of Hawai'i (the Kingdom), and is therefore not subject to the criminal laws, indeed, any laws, of the State of Hawai'i. The question of jurisdiction is a matter of law, reviewable *de novo* for right or wrong. State v. Lorenzo, 77 Hawai'i 219, 220,

¹ The Honorable Riki May Amano, judge presiding.

² The original March 5, 1999 judgment of conviction of terroristic threatening in the first degree arose out of Keoki J.K. Araujo's January 21, 1999 no contest plea.

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883 P.2d 641, 642 (App. 1994). This issue is well settled against Araujo:

We reject the first concept -- that Defendants, as "birth descendants of Native Hawaiians," are not subject to the government and courts of the State of Hawai'i -- in light of our recent decision in [Lorenzo]. See also State v. French, 77 Hawai'i 222, 883 P.2d 644 (App. 1994).

In Lorenzo, a criminal defendant claimed in his defense that the Hawai'i state courts did not have jurisdiction over him because he was a citizen of [the Kingdom], an independent sovereign nation. Although the basis for his defense was less than clear, the defendant appeared to be arguing that, as a "citizen of the Kingdom," he was immune from being tried in the courts of the State of Hawai'i. We rejected this argument, noting that although the governments of the State of Hawai'i and the United States had recently acknowledged the illegality of the overthrow of the Kingdom, neither recognizes that the Kingdom exists at the present time. Id. at 221, 883 P.2d at 643. Because the defendant had "presented no factual (or legal) basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature," we determined that the defendant had failed to meet his burden under [Hawaii Revised Statutes] § 701-115(2) (1993)³ of proving his defense of lack of jurisdiction [by reason of immunity]. Id. at 221, 883 P.2d at 643.

Nishitani v. Baker, 82 Hawai'i 281, 289, 921 P.2d 1182, 1190 (App. 1996) (original footnote replaced). Because Araujo has not, either below or on appeal, "'presented [any] factual (or legal) basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature,'" id. (citing Lorenzo, 77 Hawai'i at 221, 883 P.2d at 643), his point of error on appeal must fail. See also French, 77 Hawai'i at 228, 883 P.2d at 650 (citing and quoting Lorenzo in rejecting the same immunity defense). Cf. State v. Lee, 90 Hawai'i 130, 141-42, 976 P.2d 444, 455-56 (1999) (rejecting the

³ Hawaii Revised Statutes § 701-115(2) (1993) provides, in pertinent part, that "[n]o defense may be considered by the trier of fact unless evidence of the specified fact or facts has been presented."

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notion that the various constitutions of the former Kingdom can bind the State, or trump or supplement our regnant Hawai'i Constitution).

Although Araujo concedes the foregoing line of adverse authorities, he contends they were "wrongly decided." We disagree. Araujo also attempts at length to show that they are distinguishable from his case and his arguments. His attempts are not persuasive. Finally, Araujo exhorts that it is high time we validated a defense like his. We do not think so.

The court's July 24, 2002 order of re-sentencing is affirmed.

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

On the briefs:

Harry Eliason, for
defendant-appellant.

Acting Chief Judge

Glenn H. Shiigi,
Deputy Prosecuting Attorney,
County of Hawai'i,
for plaintiff-appellee.

Associate Judge

Associate Judge