

NOT FOR PUBLICATION

NO. 25290

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
DAVID GEORGE FELDSTEIN, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-CR. NO. 02-1-1844)

SUMMARY DISPOSITION ORDER

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

David George Feldstein (Feldstein) appeals the August 1, 2002 findings of fact, conclusions of law and order of the family court of the first circuit¹ that denied his July 12, 2002 motion to withdraw plea of guilty, set aside sentence, and reset case for trial.

Upon a meticulous review of the record and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties, we resolve Feldstein's points of error as follows:

1. For his first point of error on appeal, Feldstein contends the family court erred in a constitutional dimension when it denied his motion to withdraw guilty plea, because he did not knowingly, intelligently and voluntarily proffer his plea.

¹ The Honorable Marcia J. Waldorf, judge presiding.

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We disagree. Upon our independent review of the whole record, State v. Topasna, 94 Hawai'i 444, 452, 16 P.3d 849, 857 (App. 2000), we conclude that Feldstein failed to shoulder his burden of making a "strong showing[,]" State v. Nguyen, 81 Hawai'i 279, 286, 916 P.2d 689, 696 (1996) (citation and internal quotation marks omitted), that he proffered his plea "involuntarily or without knowledge of the direct consequences of the plea[,]" id. at 292, 916 P.2d at 702 (citations omitted), such that there was "manifest injustice" entitling him to withdraw his plea. Hawai'i Rules of Penal Procedure (HRPP) Rule 32(d); Nguyen, 81 Hawai'i at 286, 916 P.2d at 696. Hence, the family court did not abuse its discretion, id., when it denied Feldstein's motion to withdraw plea of guilty.

2. For his other point of error on appeal, Feldstein contends the family court committed plain error and denied him due process when it entered judgment upon his guilty plea, because the police report the family court relied upon in satisfying itself that there was a factual basis for the plea, HRPP Rule 11(f), is not in the record. However, Feldstein did not below and does not on appeal allege, much less attempt to show, and the record does not in any wise suggest, that any prejudice to him inhered in the absence of the police report from the record. We therefore decline to notice plain error in this regard. HRPP Rule 52(b); State v. Vaitoqi, 59 Haw. 592, 593 n.4, 585 P.2d 1259, 1260 n.4 (1978). Instead, after an independent

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review of the whole record, Topasna, 94 Hawai'i at 452, 16 P.3d at 857, we confirm "an on-the-record colloquy between the court and the defendant wherein the defendant is shown to have a full understanding of what the plea of guilty connotes and its consequences." Vaitoqi, 59 Haw. at 602, 585 P.2d at 1265.

Therefore,

IT IS HEREBY ORDERED that the August 1, 2002 findings of fact, conclusions of law and order of the family court are affirmed.

DATED: Honolulu, Hawai'i, August 31, 2004.

On the briefs:

George A. Burke,
Deputy Public Defender,
State of Hawai'i,
for defendant-appellant.

Chief Judge

Associate Judge

Loren J. Thomas,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.

Associate Judge