

NOT FOR PUBLICATION

NO. 25306

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
HAROLD U. JIM, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT,
SOUTH HILO DIVISION
(Citation Nos. 1717350MH to 1717355MH)

MEMORANDUM OPINION

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

In this appeal, Defendant-Appellant Harold U. Jim (Jim) challenges his conviction and sentence, orally pronounced by the District Court of the Third Circuit (the district court)¹ on August 8, 2002 and memorialized in a written judgment filed on September 30, 2003, convicting him of, and sentencing him for: (1) one count of not having a driver's license, in violation of Hawaii Revised Statutes (HRS) § 286-102(a) (1993); (2) one count of operating a motor vehicle without carrying no-fault insurance, in violation of HRS § 431:10C-104(a) and (b) (Supp. 2003); and (3) one count of not having motor vehicle license plates, in violation of HRS § 249-7(b) (1993).

We affirm.

^{1/} Judge Sandra P. Schutte presided over the proceedings that led to this appeal.

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BACKGROUND

On January 27, 2001, while Jim was operating a motor vehicle on Route 11 in Hilo, on the island of Hawai'i, he was stopped by Police Officer Reed Mahuna (Officer Mahuna) after Officer Mahuna observed an invalid "Hawaiian law" license plate on Jim's vehicle. When Jim was unable to produce a valid driver's license, proof of no-fault insurance, registration for the vehicle he was driving, proof of valid weight tax, or proof of a valid safety check, Officer Mahuna cited him for six traffic infractions or offenses.

On February 11, 2002,² a six-count complaint was filed in the district court against Jim. In March 2002, Jim filed a Motion to Dismiss for Lack of Jurisdiction, which was denied by the district court. On April 19, 2002, Jim filed a notice of removal of this case to the United States District Court for the District of Hawai'i (the federal court), pursuant to 28 United States Code (U.S.C.) §§ 1443 & 1446. On August 8, 2002, Jim was arraigned before the district court on the six counts he was charged with and, thereafter, tried. After the evidentiary portion of the trial was completed, the district court orally found Jim guilty of, and sentenced Jim on, three of the charges. Notation of the district court's oral decision was made on the

^{2/} An earlier prosecution of Defendant-Appellant Harold U. Jim (Jim) for the six offenses that he was charged with committing on January 27, 2001 was dismissed without prejudice for violation of Jim's Hawai'i Rules of Penal Procedure (HRPP) Rule 48 speedy-trial right.

district court's "disposed" paper calendar³ for August 8, 2002. Jim filed a notice of appeal on September 5, 2002.

On November 21, 2002, federal court Magistrate Judge Leslie E. Kobayashi (Judge Kobayashi) entered Findings and Recommendation Granting Motion to Remand, in which she concluded that Jim's Notice for Removal was "meritless on its face" and recommended that the case be remanded to the district court. Federal court Chief Judge David Alan Ezra adopted Judge Kobayashi's findings and recommendation and ordered the case remanded to the district court on February 28, 2003.

On September 26, 2003, this court ordered a temporary remand of this case to the district court, with instructions that it file with the clerk of the district court a written judgment of Jim's conviction and sentence, as required under State v. Bohannon, 102 Hawai'i 228, 236, 74 P.3d 980, 988 (2003). The required written judgment was filed with the district court clerk on September 30, 2003.

ISSUES ON APPEAL

Jim raises two arguments. First, he claims that the district court did not have jurisdiction to enter the judgment of conviction and sentence against him because a notice of removal of his case pursuant to 18 U.S.C. § 1446(c) (2000) was pending

^{3/} Pursuant to HRPP Rule 32(c)(2):

A judgment of conviction in the district court shall set forth the disposition of the proceedings and the same shall be entered on the record of the court. The notation of the judgment by the clerk on the calendar constitutes the entry of judgment.

before the federal court and no remand order from the federal court had been received by the district court prior to entry of the judgment of conviction and sentence. Second, Jim contends that the traffic laws of Plaintiff-Appellee State of Hawai'i (the State) are not applicable on Hawaiian home lands, where he was cited.

DISCUSSION

A.

The procedure for removal of state court criminal proceedings to the federal court is governed by 28 U.S.C.

§ 1446(c) (2000), which provides, in relevant part, as follows:

- (c) (1) A notice of removal of a criminal prosecution shall be filed not later than thirty days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the defendant or defendants leave to file the notice at a later time.
- (2) A notice of removal of a criminal prosecution shall include all grounds for such removal. A failure to state grounds which exist at the time of the filing of the notice shall constitute a waiver of such grounds, and a second notice may be filed only on grounds not existing at the time of the original notice. For good cause shown, the United States district court may grant relief from the limitations of this paragraph.
- (3) The filing of the notice of removal of a criminal proceeding shall not prevent the State court in which such prosecution is pending from proceeding further, except that a judgment of conviction shall not be entered unless the prosecution is first remanded.^[4]

^{4/} The current provisions of 28 United States Code § 1446(c) (2000) are in contrast to previous versions of this statute, which did not allow state criminal prosecutions for which a notice of removal had been filed to proceed at all until the remand was received. See, e.g., Schuchman v. State, 236 N.E.2d 830 (Ind. 1968) (trial, verdict, and judgment thereon were void (continued...))

(Footnote added.)

The foregoing statute allows a state court to proceed with a criminal prosecution while a notice of removal is pending in the federal court but prohibits the state court from entering "a judgment of conviction . . . unless the prosecution is first remanded." 28 U.S.C. § 1446(c) (3) (2000). See People v. Wiedemer, 899 P.2d 283 (Colo. Ct. App. 1995) (holding that upon the filing of a removal petition in the federal court, a state court may proceed with defendant's case but may not enter a judgment of conviction until the petition is denied); State v. Matzke, 696 P.2d 396, 400 (Kan. 1985) (deciding that a state court "retains jurisdiction of criminal matters upon the filing of a removal petition in the federal court" and "may continue with proceedings, except that a judgment cannot be entered unless the petition has been denied").

The dispositive issue, therefore, is when the district court entered the judgment of conviction in this case.

In Bohannon, the Hawai'i Supreme Court held that "in order to appeal a criminal matter in the district court, the appealing party must appeal from a *written* judgment or order that has been filed with the clerk of the court pursuant to [Hawaii Rules of Appellate Procedure] Rule 4(b) (3)." Bohannon at 236, 74

^{4/}(...continued)
under previous version of § 1446 because state court proceeded without awaiting remand). See also State v. Cegielski, 368 N.W.2d 628 (Wis. 1985) (discussing 1977 amendments to § 1446(c), comparing prior and current law, and vacating judgment of sentence because it was entered while court's jurisdiction to enter the judgment had been suspended by the federal removal statute).

P.3d at 988 (emphasis in original). Because no written judgment had originally been filed in this case, this court, on September 26, 2003, ordered a temporary remand of this case to the district court for entry of a separate written judgment, as required by Bohannon.

The written judgment of conviction and sentence was filed with the clerk of the district court on September 30, 2003, seven months after the federal court remanded the case to the district court. Therefore, the district court unquestionably had jurisdiction to enter the judgment of conviction and sentence against Jim on September 30, 2003.

B.

Jim's second argument is similarly without merit. Jim argues that as a Native Hawaiian, he was not subject to the jurisdiction of the State for traffic offenses committed on Hawaiian home lands. That contention was conclusively resolved by the Hawai'i Supreme Court in State v. Jim, 80 Hawai'i 168, 907 P.2d 754 (1995), which held that the State had law enforcement jurisdiction over Hawaiian home lands. It is unnecessary, therefore, to discuss this argument any further here.

C.

In light of the foregoing conclusions, it is unnecessary for us to address the argument by the State that any error by the district court in proceeding with Jim's case without the remand order was harmless.

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The Judgment of the district court is affirmed.

DATED: Honolulu, Hawai'i, January 27, 2004.

On the briefs:

Harold U. Jim,
defendant-appellant, *pro se*.

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of Hawai'i for plaintiff-
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