

NOT FOR PUBLICATION

NO. 25337

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
MERWIN GAINES, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 01-1-0898)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Merwin Gaines (Gaines) appeals the Judgment filed on August 27, 2002 in the Circuit Court of the First Circuit (circuit court).¹

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 Gaines's point of error as follows:

Gaines contends the circuit court erred by not instructing the jury on the included offense of Assault in the Third Degree. Assuming that the circuit court erred by not instructing the jury on the included offense of Assault in the Third Degree, it was harmless error because Gaines was convicted of Assault in the Second Degree. State v. Haanio, 94 Hawai'i 405, 415, 16 P.3d 246, 256 (2001).

¹ The Honorable Sandra A. Simms presided.

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Therefore,

IT IS HEREBY ORDERED that the Judgment filed on August 27, 2002 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, April 13, 2004.

On the briefs:

Linda C.R. Jameson,
Deputy Public Defender,
for defendant-appellant.

Chief Judge

Mark Yuen,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.

Associate Judge

Associate Judge