

NO. 25719

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
TAFAlFA SEIULIENA, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 98-2007)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Tafafa Seiuliena (Seiuliena) appeals from the Order Denying Motion for Reconsideration of Sentence filed on January 24, 2003 in the Circuit Court of the First Circuit (circuit court).¹ Seiuliena's Motion for Reconsideration of Sentence was filed on December 17, 2002, pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 35 (2002).²

¹ The Honorable Karen S.S. Ahn presided.

² Hawai'i Rules of Penal Procedure (HRPP) Rule 35 (2002) provides:

Rule 35. Correction or reduction of sentence.

The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence. The court may reduce a sentence within 90 days after the sentence is imposed, or within 90 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 90 days after entry of any order or judgment of the Supreme Court of the United States denying review of, or having the effect of upholding a judgment of conviction. A motion to correct or reduce a sentence which is made within the time period aforementioned shall empower the court to act on such motion even though the time period has expired. The filing of a notice of appeal shall not deprive the court of jurisdiction to entertain a timely motion to reduce a sentence.

On appeal, Seiuliena contends the circuit court (1) erred in finding that she failed to comply with a substantial requirement imposed as a condition of the order of probation, (2) erred in finding that her failure to comply with a substantial requirement imposed as a condition of the order of probation was inexcusable, and (3) abused its discretion in resentencing her to a term of ten years of incarceration rather than probation.

Upon careful review of the record and the briefs submitted by the parties, we hold as follows:

(1) The circuit court did not err in finding that Seiuliena failed to comply with a substantial requirement imposed as a condition of the order of probation. There is substantial evidence in the record to support the conclusion that Seiuliena violated several of the terms and conditions of her probation and that she did so on numerous occasions. See State v. Reyes, 93 Hawai'i 321, 327, 2 P.3d 725, 731 (App. 2000); State v. Anderson, 84 Hawai'i 462, 467, 935 P.2d 1007, 1012 (1997).

(2) The circuit court did not err in finding that Seiuliena's failure to comply with a substantial requirement imposed as a condition of the order of probation was inexcusable. It is apparent from the record before us that the circuit court's conclusion that Seiuliena inexcusably failed to comply with the terms and conditions of her probation was properly based upon and supported by the court's finding of fact that she had failed to

comply with a substantial requirement imposed as a condition of the order of probation. See Reyes, 93 Hawai'i at 327, 2 P.3d at 731.

(3) The circuit court did not abuse its discretion in resentencing Seiuliena to a term of ten years of incarceration rather than probation. See HRS § 706-625(5) (Supp. 2003); HRS § 712-1242(1)(b) (1993); HRS § 712-1242(2) (1993); HRS § 706-660(1) (1993); see also State v. Tauiliili, 96 Hawai'i 195, 198, 29 P.3d 914, 917 (2001).

Therefore,

IT IS HEREBY ORDERED that the circuit court's January 24, 2003 Order Denying Motion for Reconsideration of Sentence is affirmed.

DATED: Honolulu, Hawai'i, September 17, 2004.

On the briefs:

Randal I. Shintani
for defendant-appellant.

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

Chief Judge

Associate Judge

Associate Judge