

NO. 25722

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
JUSTIN D. RABANG, Defendant-Appellant

APPEAL FROM THE THIRD CIRCUIT COURT  
(CR. NO. 02-1-0277)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Justin D. Rabang (Rabang) appeals the Judgment filed March 17, 2003 in the Circuit Court of the Third Circuit (circuit court).<sup>1</sup> Rabang was charged with Robbery in the Second Degree, in violation of Hawaii Revised Statutes (HRS) § 708-841(1)(a) (1993).<sup>2</sup> On January 27, 2003, Rabang

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<sup>1/</sup> The Honorable Greg K. Nakamura presided.

<sup>2/</sup> Hawaii Revised Statutes (HRS) § 708-841 (1993) provides in relevant part:

**§708-841 Robbery in the second degree.** (1) A person commits the offense of robbery in the second degree if, in the course of committing theft:

- (a) The person uses force against the person of anyone present with the intent to overcome that person's physical resistance or physical power of resistance[.]

. . . . .

- (2) Robbery in the second degree is class B felony.

entered a guilty plea to the charge pursuant to a plea agreement, in which the State agreed to recommend that Rabang be sentenced as a youthful offender pursuant to HRS 706-667 (1993 & Supp. 2003)<sup>3</sup> and agreed that Rabang could argue for probation, no further jail, and a deferred plea. The circuit court sentenced Rabang to five years of incarceration pursuant to HRS § 706-667, with credit for time served.

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<sup>3/</sup> HRS § 706-667 (1993 & Supp. 2003) provides:

**§706-667 Young adult defendants.** (1) Defined. A young adult defendant is a person convicted of a crime who, at the time of sentencing, is less than twenty-two years of age and who has not been previously convicted of a felony as an adult or adjudicated as a juvenile for an offense that would have constituted a felony had the young adult defendant been an adult.

(2) Specialized correctional treatment. A young adult defendant who is sentenced to a term of imprisonment which may exceed thirty days may be committed by the court to the custody of the department of public safety, shall receive, as far as practicable, such special and individualized correctional and rehabilitative treatment as may be appropriate to the young adult defendant's needs.

(3) Special term. A young adult defendant convicted of a felony may, in lieu of any other sentence of imprisonment authorized by this chapter, be sentenced to a special indeterminate term of imprisonment if the court is of the opinion that such special term is adequate for the young adult defendant's correction and rehabilitation and will not jeopardize the protection of the public. When ordering a special indeterminate term of imprisonment, the court shall impose the maximum length of imprisonment which shall be eight years for a class A felony, five years for a class B felony, and four years for a class C felony. The minimum length of imprisonment shall be set by the Hawaii paroling authority in accordance with section 706-669. During this special indeterminate term, the young adult will be incarcerated separately from career criminals, when practicable.

This section shall not apply to the offenses of murder or attempted murder.

On appeal, Rabang contends the circuit court abused its discretion in applying HRS § 706-606 (1993),<sup>4</sup> in particular HRS § 706-606(4), when sentencing Rabang to five years in prison while his co-defendant, Steven Christian Willis (Willis), received probation by a different judge. Rabang also contends the circuit court abused its discretion (1) by concluding that Willis's sentence was a 52-year sentence of imprisonment with a delayed mittimus instead of the sentence of probation that Willis actually received,<sup>5</sup> and (2) in using this conclusion to justify

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<sup>4/</sup> HRS § 706-606 (1993) provides as follows:

**§706-606 Factors to be considered in imposing a sentence.**

The court, in determining the particular sentence to be imposed, shall consider:

- (1) The nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) The need for the sentence imposed:
  - (a) To reflect the seriousness of the offense, to promote respect for law, and to provide just punishment for the offense;
  - (b) To afford adequate deterrence to criminal conduct;
  - (c) To protect the public from further crimes of the defendant; and
  - (d) To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) The kinds of sentences available; and
- (4) The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

<sup>5/</sup> The circuit court judge was fully aware of the sentence received by Willis.

a five-year sentence of imprisonment for Rabang despite Rabang's having a lesser culpability, a lesser number of charges, and no prior record. Rabang argues that, like Willis, he should have been sentenced to probation, with prison time imposed only if he failed to complete his probation conditions.

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 sentencing Rabang to five years of imprisonment as a youthful offender pursuant to HRS § 706-667 because "[a] sentencing court is afforded wide latitude in the selection of penalties from those prescribed and in the determination of their severity." State v. Akana, 10 Haw. App. 381, 386, 876 P.2d 1331, 1334 (1994) (internal quotation marks and citation omitted). The circuit court had the authority to sentence Rabang to a sentence different from his co-defendant because "[a] sentencing court exercises broad discretion in deciding whether to impose a prison term." State v. Kicklighter, 60 Haw. 314, 316, 588 P.2d 929, 931 (1979).

(2) The circuit court did not abuse its discretion in applying HRS § 706-606 and sentencing Rabang to five years of imprisonment even though his co-defendant received a different sentence because "[t]he weight to be given the factors set forth

in HRS § 706-606 in imposing sentence is a matter generally left to the discretion of the sentencing court, taking into consideration the circumstances of each case." Akana, 10 Haw. App. at 386, 876 P.2d at 1334. The circuit court was aware that Willis had been sentenced to probation and that if he violated the conditions of probation, including failing to complete a drug treatment program, he could potentially be re-sentenced to up to 52 years of imprisonment. The record shows that the circuit court, having considered and with full knowledge of Willis's true sentence, imposed its sentence on Rabang. The circuit court expressly stated its reasons for sentencing Rabang to imprisonment as a youthful offender and not to probation.

"Therefore, absent clear evidence to the contrary, it is presumed that a sentencing court, following the receipt of a pre-sentence report under HRS § 706-601 and a mandated sentencing hearing under HRS 706-604, will have considered all the factors in HRS § 706-606 before imposing [a sentence]." State v. Sinagoga, 81 Hawai'i 421, 428, 918 P.2d 228, 235 (App. 1996). The circuit court sentenced Rabang according to the youthful offender statute under HRS § 607-667, which was well within the circuit court's wide latitude of discretion.

Therefore,

**NOT FOR PUBLICATION**

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IT IS HEREBY ORDERED that the Judgment filed on March 17, 2003 in the Circuit Court of the Third Circuit is affirmed.

DATED: Honolulu, Hawai'i, October 12, 2004.

On the briefs:

Stanton C. Oshiro  
for defendant-appellant.

Mitchell D. Roth,  
Deputy Prosecuting Attorney,  
County of Hawai'i,  
for plaintiff-appellee.

Chief Judge

Associate Judge

Associate Judge