

NO. 25751

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
JOSEPH P. PURTELL, JR., Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 98-1051)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Joseph P. Purtell, Jr., (Purtell) appeals from the "Findings of Facts, Conclusions of Law and Order Denying Defendant's Motion for Correction of Illegal Sentence Pursuant to [Hawai'i Rules of Penal Procedure (HRPP)] H.R.P.P. Rule 35" entered on March 25, 2003 in the Circuit Court of the First Circuit (circuit court).¹

On appeal, Purtell contends the circuit court (1) erred in denying his "Motion for Correction of Illegal Sentence Pursuant to HRPP Rule 35" (Rule 35 Motion) based on the United States Supreme Court's decision in Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348 (2000), and (2) erred by not allowing Purtell to be represented by an "agent."² Purtell also contends (3) the circuit court erred by holding that it properly sentenced

¹ The Honorable Victoria S. Marks presided.

² Joseph P. Purtell, Jr.'s "agent" was apparently another inmate.

Purtell to an extended term sentence as a "multiple offender" under Hawaii Revised Statutes § 706-662(4) (Supp. 2004); (4) "the state[']s use of wrong arguments does not come within the meaning of an answer as mandated under [Hawai'i Rules of Civil Procedure] H.R.Civ.P. Rule 8(d)"; (5) "the court[']s use of extrinsic evidence violates the state[']s constitution art. I, § 10 & 14, and the United States Constitution Fifth Amendment"; (6) Apprendi is retroactive under Teague v. Lane, 489 U.S. 288, 109 S. Ct. 1060 (1989); and (7) because the circuit court did not allow Purtell's "agent" to represent him in court, Purtell was denied his constitutional right to contract.

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

(1) Purtell's extended terms of imprisonment were not illegal sentences under Apprendi. State v. Rivera, __ Hawai'i __, __, 102 P.3d 1044, 1061 (2004).

(2) The circuit court did not err in refusing to allow Purtell's "agent" to represent him. United States v. Tran, 105 F. Supp. 2d 608, 609 (S.D. Tex. 2000). Hawaii Revised Statutes §§ 605-2 (1993) and 605-14 (1993) prohibit unlicensed persons to practice law in any court of the state. "There is no right to lay counsel." United States v. Turnbull, 888 F.2d 636, 638 (9th Cir. 1989).

(3) Purtell's other arguments are equally without merit.

Therefore,

IT IS HEREBY ORDERED that the "Findings of Facts, Conclusions of Law and Order Denying Defendant's Motion for Correction of Illegal Sentence Pursuant to H.R.P.P. Rule 35" filed on March 25, 2003 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, January 28, 2005.

On the briefs:

Joseph P. Purtell, Jr.,
defendant-appellant pro se.

Daniel H. Shimizu,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.

Chief Judge

Associate Judge

Associate Judge