

NOT FOR PUBLICATION

NO. 25904

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
DEBORAH K. MAINAAUPO, aka Debra K. Kanakaole,
Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 00-1-1520)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Deborah K. Mainaupo, aka Debra K. Kanakaole, (Mainaupo) appeals from the Judgment entered on August 22, 2002 in the Circuit Court of the First Circuit (circuit court).^{1/} Mainaupo was charged with Attempted Murder in the Second Degree in violation of Hawaii Revised Statutes (HRS) §§ 705-500 (1993), 707-701.5 (1993), and 706-656 (1993 & Supp. 2004). On October 30, 2000, the circuit court declared Mainaupo unfit to proceed to trial and committed her to the Hawai'i State Hospital. On July 11, 2001, Mainaupo was declared fit to proceed to trial by the circuit court.

^{1/} The Honorable Marie N. Milks presided.

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

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On January 15, 2002, a jury found her guilty of Attempted Assault in the First Degree in violation of HRS §§ 705-500^{2/} and 707-710 (1993).^{3/} The circuit court sentenced Mainaupo to an extended term of imprisonment of twenty years pursuant to HRS § 706-662(1) (Supp. 2004),^{4/} with a mandatory minimum term of

^{2/} Hawaii Revised Statutes (HRS) § 705-500 (1993) provides:

§705-500 Criminal attempt. (1) A person is guilty of an attempt to commit a crime if the person:

- (a) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as the person believes them to be; or
- (b) Intentionally engages in conduct which, under the circumstances as the person believes them to be, constitutes a substantial step in a course of conduct intended to culminate in the person's commission of the crime.

(2) When causing a particular result is an element of the crime, a person is guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, the person intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result.

(3) Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent.

^{3/} HRS § 707-710 (1993) provides:

§707-710 Assault in the first degree. (1) A person commits the offense of assault in the first degree if the person intentionally or knowingly causes serious bodily injury to another person.

(2) Assault in the first degree is a class B felony.

^{4/} HRS § 706-662(1) (Supp. 2004) provides:

§706-662 Criteria for extended terms of imprisonment. A convicted defendant may be subject to an extended term of imprisonment under section 706-661, if the convicted defendant satisfies one or more of the following criteria:

- (1) The defendant is a persistent offender whose imprisonment for an extended term is necessary for
- (continued...)

imprisonment of four years as a repeat offender pursuant to HRS § 706-606.5 (Supp. 2004).^{5/}

On appeal, Mainaupo contends the circuit court (1) denied her a fair trial by finding her competent to stand trial and (2) erred in sentencing her to an extended term of imprisonment as a persistent offender.

On February 2, 2005, this court granted Mainaupo's motion to reopen briefing. Mainaupo filed a letter brief contending that, based on the United States Supreme Court's decision in Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348 (2000), the circuit court erred in imposing on her an extended

^{4/}(...continued)

protection of the public. The court shall not make this finding unless the defendant has previously been convicted of two felonies committed at different times when the defendant was eighteen years of age or older.

^{5/} HRS § 706-606.5 (Supp. 2004) provides in relevant part:

§706-606.5 Sentencing of repeat offenders. (1)

Notwithstanding section 706-669 and any other law to the contrary, any person convicted of . . . any class B felony, . . . or who is convicted of attempting to commit . . . any class B felony, . . . and who has a prior conviction or prior convictions for the following felonies, including an attempt to commit the same: murder, murder in the first or second degree, a class A felony, a class B felony, any of the class C felony offenses enumerated above, or any felony conviction of another jurisdiction shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole during such period as follows:

. . . .

(b) Two prior felony convictions:

. . . .

(iii) Where the instant conviction is for a class B felony--six years, eight months[.]

sentence. The State filed a letter brief disputing this contention.

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

(1) The circuit court had an adequate basis to determine that Mainaupo was fit to proceed. State v. Janto, 92 Hawai'i 19, 29-30, 986 P.2d 306, 316-317 (1999). The circuit court did not abuse its discretion in determining Mainaupo fit to proceed. State v. Castro, 93 Hawai'i 424, 425, 5 P.3d 414, 415 (2000).

(2) The circuit court did not err in sentencing Mainaupo to an extended term of imprisonment pursuant to HRS § 706-662(1). Mainaupo had two prior convictions for felonies committed at different times when she was eighteen years of age or older, and the circuit court's determination that an extended sentence was necessary for the protection of the public did not constitute an abuse of discretion. The circuit court did not err in sentencing Mainaupo as a repeat offender pursuant to HRS § 706-606.5.

(3) Mainaupo's extended term of imprisonment was not an illegal sentence under Apprendi or its progeny. State v. Rivera, 106 Hawai'i 146, 102 P.3d 1044 (2004).

Therefore,

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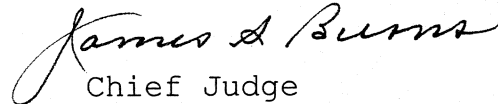
IT IS HEREBY ORDERED that the Judgment entered on August 22, 2002 in the Circuit Court of the First Circuit is affirmed.


DATED: Honolulu, Hawai'i, June 24, 2005.

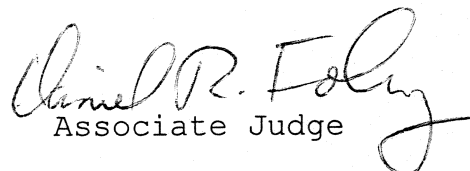
On the briefs:

Mary Ann Barnard
for defendant-appellant.

Loren J. Thomas,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellant.


Chief Judge


Associate Judge


Associate Judge