

NOT FOR PUBLICATION

NO. 25936

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
CODY M. PUNSALAN, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT,
HONOLULU DIVISION
(HPD CR. NO. 00232834)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Cody M. Punsalan (Punsalan) appeals from the "Decision and Order Regarding State's Motion for Revocation of Probation and to Resentence and Free Standing Order of Restitution" and the "Free Standing Order of Restitution," both filed on May 30, 2003 in the District Court of the First Circuit, Honolulu Division (district court).¹

On appeal, Punsalan contends the district court erred by (1) failing to dismiss the State's Motion for Revocation of Probation and Resentence and (2) entering its Free Standing Order of Restitution.

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

¹ The Honorable Leslie A. Hayashi presided.

(1) Punsalan's "Motion to Dismiss Prosecution's Motion for Revocation of Probation and Resentence, Filed May 29, 2002," filed February 14, 2003, was a collateral attack on the October 19, 2001 Restitution Order and therefore was properly denied by the district court. State v. Grindling, 96 Hawai'i 402, 405, 31 P.3d 915, 918 (2001).

(2) The district court did not err in entering its Free Standing Order of Restitution pursuant to Hawaii Revised Statutes (HRS) § 706-647 (Supp. 1999). The State's motion to revoke Punsalan's probation for his failure to pay restitution in full tolled Punsalan's period of probation. HRS § 706-627(1) (1993). Furthermore, Punsalan "would not be discharged from an order to pay restitution until the restitution was paid in full." State v. Kai, 98 Hawai'i 137, 139-40, 44 P.3d 288, 290-91 (App. 2002). The Free Standing Order of Restitution was appropriately issued after the district court found that Punsalan violated his condition of probation to pay restitution. Id. at 140-41, 44 P.3d at 291-92.

Therefore,

IT IS HEREBY ORDERED that the "Decision and Order Regarding State's Motion for Revocation of Probation and to Resentence and Free Standing Order of Restitution" and the "Free Standing Order of Restitution," both filed on May 30, 2003 in the

District Court of the First Circuit, Honolulu Division, are affirmed.

DATED: Honolulu, Hawai'i, September 7, 2005.

On the briefs:

Hayden Aluli
for Defendant-Appellant.

Chief Judge

Ryan Yeh,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Associate Judge

Associate Judge