

NO. 26062

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
HERBERT K. UNCIANO, Defendant-Appellant

ENRIKIANO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2005 NOV -4 AM 9:48

FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(HPD Cr. No. 02197831)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Herbert K. Unciano (Unciano) appeals from the May 5, 2003 Judgment of the District Court of the First Circuit (the district court)^{1/} that convicted and sentenced him for criminal contempt of court, in violation of Hawaii Revised Statutes (HRS) § 710-1077(1)(g) (1993).

The record on appeal indicates that on December 20, 2002, Unciano was served with a penal summons complaint^{2/} that charged him with criminal contempt of court, in violation of HRS § 710-1077(1)(g). Pursuant to HRS § 710-1077(2), criminal contempt of court is a misdemeanor, except as provided in subsections (3) and (7) of HRS § 710-1077. On December 30, 2002, Unciano appeared with his attorney for arraignment, and the charge was amended, apparently to a petty misdemeanor, pursuant to HRS § 710-1077(3).

^{1/} The Honorable Russel S. Nagata presided over the trial below and signed the Notice of Entry of Judgment and/or Order.

^{2/} The penal summons complaint is not in the record on appeal.

NOT FOR PUBLICATION

At the commencement of trial on May 5, 2003, Unciano was orally charged as follows:

[On or about May 26 (twenty six), 2002, in the City and County of Honolulu, State of Hawaii, you did knowingly disobey or resist the process, injunction or other -- or other mandate of a Court, thereby committing the offense of Criminal Contempt of Court in violation of Section 710-1077 of the Hawaii Revised Statute [sic].

During oral arguments held on this case, Plaintiff-Appellee State of Hawai'i (the State) conceded that because the only evidence adduced at trial related to attendance by Unciano at his son's baseball game on May 26, 2000, the State was barred by the statute of limitations from prosecuting Unciano for criminal contempt as a petty misdemeanor. We agree with the State's concession.

Accordingly, we reverse the district court's May 5, 2003 Judgment convicting Unciano of, and sentencing him for, criminal contempt of court.

DATED: Honolulu, Hawai'i, November 4, 2005.

On the briefs:

Susan L. Arnett,
deputy public defender,
State of Hawai'i,
for defendant-appellant.

Donn Fudo,
deputy prosecuting attorney,
City and County of Honolulu,
for plaintiff-appellee.

Corinne Ka Watanabe

James R. Foley