

NOT FOR PUBLICATION

NO. 26145

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

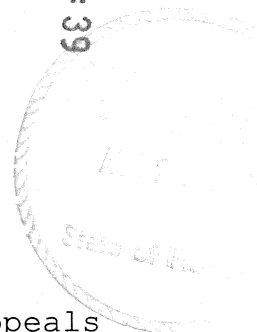
STATE OF HAWAI'I, Plaintiff-Appellee, v.
MARY VIOLET SMITH, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 02-1-0732)

NORMA T. YARA
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STATE OF HAWAII

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FILED



SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Mary Violet Smith (Smith) appeals from the Judgment entered on September 9, 2003 in the Circuit Court of the First Circuit (circuit court).^{1/} Smith entered no contest pleas to Kidnapping, in violation of Hawaii Revised Statutes (HRS) § 707-720(1)(d) (1993),^{2/} and Burglary in the First Degree, in violation of HRS § 708-810(1)(c) (1993),^{3/} and

^{1/} The Honorable Karl K. Sakamoto presided.

^{2/} Hawaii Revised Statutes (HRS) § 707-720 (1993) provides in relevant part:

§707-720 Kidnapping. (1) A person commits the offense of kidnapping if the person intentionally or knowingly restrains another person with intent to:

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- (d) Inflict bodily injury upon that person or subject that person to a sexual offense[.]
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(3) In a prosecution for kidnapping, it is a defense which reduces the offense to a class B felony that the defendant voluntarily released the victim, alive and not suffering from serious or substantial bodily injury, in a safe place prior to trial.

^{3/} HRS § 708-810 (1993) provides in relevant part:

§708-810 Burglary in the first degree. (1) A person commits the offense of burglary in the first degree if the person

(continued...)

was sentenced to five years of probation on each count, to run concurrently.

On appeal, Smith contends the Administrative Judge^{4/} erred by denying her Ex Parte Application for Court Approval of Psychologist Fees so her psychologist could assist her at her sentencing, and, therefore, the circuit court erred in sentencing Smith to probation instead of a deferred sentence.

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

(1) "Under HRS § 802-7, the court may provide a criminal defendant with funds for expert assistance 'upon a finding that such funds are necessary for an adequate defense.'" State v. Hoopii, 68 Haw. 246, 248, 710 P.2d 1193, 1195 (1985) (ellipsis omitted). Smith had received an assessment by a psychologist prior to her ex parte application. She failed to meet her burden of showing how the requested funds for another assessment by the same psychologist were necessary for an

^{3/}(...continued)

intentionally enters or remains unlawfully in a building, with intent to commit therein a crime against a person or against property rights, and:

. . . .
(c) The person recklessly disregards a risk that the building is the dwelling of another, and the building is such a dwelling.

. . . .
(3) Burglary in the first degree is a class B felony.

^{4/} The Honorable Dan Kochi presided.

adequate defense. Arnold v. Higa, 61 Haw. 203, 205, 600 P.2d 1383, 1385 (1979).

(2) The circuit court granted Smith probation rather than sentencing her to prison (as requested by the State) or granting her a deferred sentence (as requested by Smith). Smith fails to show how the circuit court "clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant" in granting Smith probation. State v. Crisostomo, 94 Hawai'i 282, 287, 12 P.3d 873, 878 (2000) (internal quotation marks, citation, and brackets omitted).

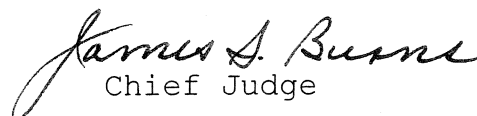
Therefore,

IT IS HEREBY ORDERED that the Judgment entered on September 9, 2003 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, August 23, 2005.

On the briefs:

Samuel P. King, Jr.,
for Defendant-Appellant.


Chief Judge

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


Associate Judge


Associate Judge