

NOT FOR PUBLICATION

NO. 26167

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
DANIEL ALAN JOHNSON, aka STEVEN JAMES DAY,
Defendant-Appellant

APPEAL FROM THE THIRD CIRCUIT COURT
(CR. NO. 95-170)

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

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

2005 JUN 17 AM 6:55

FILED

Defendant-Appellant Daniel Alan Johnson aka Steven James Day (Johnson) appeals from the Order Denying Defendant's Motion for Reconsideration filed on October 16, 2003, and the Order Denying Defendant's Motion for Additional Credit for Time Served to Correct an Illegal Sentence filed on September 23, 2003 in the Circuit Court of the Third Circuit (circuit court).^{1/}

The circuit court had sentenced Johnson to probation for five years, and the Amended Judgment was entered on November 10, 1997. The circuit court revoked Johnson's probation and resentenced him to a ten-year term of imprisonment (Order of Resentencing filed April 3, 2002^{2/}).

^{1/} The Honorable Terence T. Yoshioka presided.

^{2/} The resentencing order was appealed and affirmed by this court in State v. Johnson, No. 25055 (February 6, 2004).

On April 16, 2003, Johnson filed a Motion for Reconsideration, to Vacate Sentence and Set Aside Judgment (Motion for Reconsideration) pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 35. Johnson stated that he had been returned to the State of Hawai'i in February 1999 on a probation revocation based upon allegations by the State that there was evidence of a conviction of Johnson while he was still on probation and that this evidence was contained in his probation file. Johnson had submitted a written request to the State for discovery of his probation file, and the State had denied the request. Johnson had then subpoenaed his probation file, which subpoena the State successfully moved to quash. Johnson contended that his ten-year sentence was illegal and he was unable to present a potentially meritorious defense because he had been denied access to his probation file.

On August 13, 2003, Johnson filed a Motion for Additional Credit for Time Served to Correct an Illegal Sentence (Motion for Additional Credit) pursuant to HRPP Rule 35. Johnson contended that the ten-year sentence was illegal because, among other reasons, he had not been credited with four years of the time that he had spent on probation.

Both of Johnson's motion were denied by the circuit court, and Johnson timely appealed both orders.

On appeal, Johnson argues: (1) the circuit court abused its discretion by denying his Motion for Additional Credit based upon the violation of his right against double jeopardy; (2) the circuit court's findings of fact, conclusions of law, and order denying his Motion for Additional Credit were clearly erroneous; (3) the circuit court abused its discretion by denying his Motion for Reconsideration based upon the violation of HRPP Rule 16; (4) the circuit court abused its discretion by denying his Motion for Reconsideration based upon an illegal sentence imposed upon him; (5) the circuit court abused its discretion by denying his Motion for Reconsideration based upon the relevant factors in Hawaii Revised Statutes (HRS) §§ 706-621 (1993) and 706-606 (1993); and (6) the circuit court's findings of fact, conclusions of law, and order denying his Motion for Reconsideration were clearly erroneous.

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

(1) The circuit court did not err in denying Johnson's Motion for Additional Credit. Johnson was only entitled to "time-served credit" for presentence imprisonment, which the circuit court granted. State v. Rauch, 94 Hawai'i 315, 326, 13 P.3d 324, 335 (2000); HRS § 706-623(2) (Supp. 1995). Johnson was not entitled to presentence credit for his prior term of probation. "When the court revokes probation, it may impose on

the defendant any sentence that might have been imposed originally for the crime of which the defendant was convicted." HRS 706-625(5) (Supp. 2004). This is exactly what the circuit court did while granting Johnson credit for presentence imprisonment.

(2) Johnson's other contentions are equally unavailing.

Therefore,

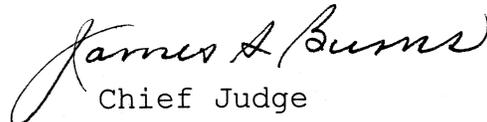
The Order Denying Defendant's Motion for Reconsideration filed on October 16, 2003 and the Order Denying Defendant's Motion for Additional Credit for Time Served to Correct an Illegal Sentence filed on September 23, 2003 in the Circuit Court of the Third Circuit are affirmed.

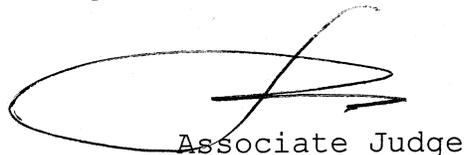
DATED: Honolulu, Hawai'i, June 17, 2005.

On the briefs:

Harry Eliason
for defendant-appellant.

Michael J. Udovic,
Deputy Prosecuting Attorney,
County of Hawai'i,
for plaintiff-appellee.


Chief Judge


Associate Judge


Associate Judge