

NOT FOR PUBLICATION

NO. 26254

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
DAVID GEORGE FELDSTEIN, Defendant-Appellant

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2005 OCT - 6 AM 10: 12

FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-CR. NO. 03-1-1643)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant David George Feldstein (Feldstein) appeals the Judgment^{1/} filed on October 3, 2003 in the Family Court of the First Circuit (family court).^{2/} A jury found Feldstein guilty of Abuse of Family or Household Members, in violation of Hawaii Revised Statutes (HRS) § 709-906 (Supp. 2004). The family court sentenced Feldstein to two years of probation and thirty days in jail.

On appeal, Feldstein claims the following: (1) there was insufficient evidence to support his conviction on the charge of Abuse of Family or Household Members; and (2) he was denied effective assistance of counsel because his attorney failed to (a) object to the use of an interpreter for the complainant at

^{1/} The October 3, 2003 Judgment fails to set forth the jury's verdict as nothing was checked in any of the categories under the heading "DEFENDANT IS CONVICTED AND FOUND/PLED GUILTY." The circuit court is hereby ordered to file an Amended Judgment setting forth nunc pro tunc that Feldstein was convicted as charged.

^{2/} The Honorable Reynaldo D. Graulty presided.

trial, (b) question the police officer as to discrepancies in different parts of the officer's report, and (c) introduce as evidence the medical records of Feldstein's injuries. Feldstein argues his conviction should be reversed and the matter remanded to the lower court for a new trial.

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

(1) Feldstein has failed to show that there was insufficient evidence to support his conviction on the charge of Abuse of a Family or Household Members. State v. Aki, 102 Hawai'i 457, 463-64, 77 P.3d 948, 954-55 (App. 2003); State v. Arakawa, 101 Hawai'i 26, 36-37, 61 P.3d 537, 547-48 (App. 2002).

(2) The failure of Feldstein's attorney to object to the use of an interpreter at trial did not result in ineffective assistance of counsel. State v. Amarin, 58 Haw. 623, 629, 574 P.2d 895, 899 (1978).

(3) We deny Feldstein's ineffective assistance of counsel sub-points regarding his attorney's failure to question the police officer as to discrepancies in different parts of his report and introduce as evidence the medical records of Feldstein's injuries. However, we deny these sub-points without prejudice to Feldstein's filing a Hawai'i Rules of Penal Procedure Rule 40 petition on his ineffective assistance of counsel claim.

Therefore,

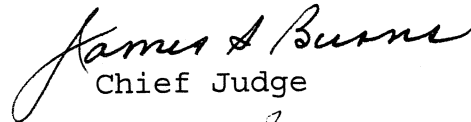
IT IS HEREBY ORDERED that the Judgment filed on October 3, 2003 in the Family Court of the First Circuit, Honolulu is affirmed.

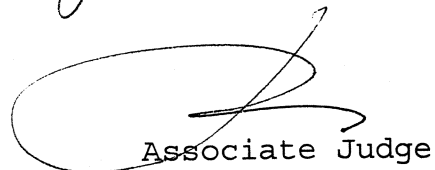
DATED: Honolulu, Hawai'i, October 6, 2005.

On the briefs:

Leland B. T. Look
for Defendant-Appellant.

James M. Anderson,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.


Chief Judge


Associate Judge


Associate Judge