
 NOT FOR PUBLICATION

NO. 26592

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
ANDREW K. KAMANA'O, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 56708)

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

2005 JUN 20 AM 9:12

FILED

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Andrew K. Kamana'o (Kamana'o) appeals from the Judgment filed on April 27, 2004 in the Circuit Court of the First Circuit (circuit court).^{1/} Kamana'o was convicted of three counts of Burglary in the First Degree, two counts of Rape in the First Degree, one count of Attempted Sodomy in the Third Degree, one count of Sodomy in the First Degree, one count of Sexual Abuse in the First Degree, and one count of Harassment.

The circuit court sentenced Kamana'o to terms of incarceration as follows: thirty days for the Harassment count, ten years for each of the Burglary in the First Degree counts,

^{1/} The Honorable Virginia Lea Crandall presided.

five years each for the Attempted Sodomy in the Third Degree and the Sexual Abuse in the First Degree counts, and life with the possibility of parole for each of the Rape in the First Degree counts and the Sodomy in the First Degree count, all terms to run concurrently.

On appeal, Kamana'o contends (1) the circuit court abused its discretion by sentencing him to extended terms of imprisonment as a multiple offender in violation of his right to trial by jury under the Sixth Amendment of the United States Constitution and Article I, § 14 of the Hawai'i Constitution, and (2) the circuit court abused its discretion by resentencing him to extended terms of imprisonment because it was beyond the scope of the Hawai'i Supreme Court remand order to consider de novo whether there were aggravating factors warranting extended terms.

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

(1) The circuit court did not violate Kamana'o's federal and state constitutional rights to trial by jury by sentencing him to extended terms of imprisonment as a multiple offender as provided by HRS § 706-662(4). See State v. Rivera, 106 Hawai'i 146, 163, 102 P.3d 1044, 1061 (2004); State v. Kaua, 102 Hawai'i 1, 72 P.3d 473 (2003); and

(2) The circuit court did not commit plain and manifest abuse of discretion by considering de novo whether there were aggravating factors warranting extended terms of imprisonment because there were no explicit limitations placed on the resentencing in the Hawai'i Supreme Court's opinion in State v. Kamana'o, 103 Hawai'i 315, 82 P.3d 401 (2003). State v. Tauiliili, 96 Hawai'i 195, 198, 29 P.3d 914, 917 (2001).

Therefore,

IT IS HEREBY ORDERED that the Judgment filed on April 27, 2004 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, June 20, 2005.

On the briefs:

Mary Ann Barnard
for defendant-appellant.

Donn Fudo,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.


Chief Judge


Associate Judge


Associate Judge