

NOT FOR PUBLICATION

NO. 26236

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
ANTHONY KIM, Defendant-Appellant

NORMA I. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2006 FEB 28 AM 10:07

FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(HPD Traffic No. 5456998MO)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Watanabe, and Nakamura, JJ.)

Defendant-Appellant Anthony Kim (Kim) appeals from the Judgment entered by the District Court of the First Circuit (the district court)^{1/} on December 2, 2003, finding him "guilty" of disregarding a red signal, in violation of Hawaii Revised Statutes (HRS) § 291C-32(a)(3)(A) (1993).^{2/}

^{1/} The Honorable Gerald H. Kibe presided.

^{2/} Hawaii Revised Statutes (HRS) § 291C-32(a)(3)(A) (1993) states, in pertinent part:

Traffic-control signal legend. (a) Whenever traffic is controlled by traffic-control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red, and yellow shall be used, except for special pedestrian signals carrying a word or symbol legend, and the lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

.....

(3) Steady red indication:

(A) Vehicular traffic facing a steady red signal alone shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until an indication to proceed is shown, except as provided in the next

(continued...)

Kim asserts three points of error: (1) The "burden falls on [Plaintiff-Appellee] State [of Hawai'i (the State)] to prove it's [sic] case beyond a shadow of a doubt[,]" and there was insufficient credible evidence to find him "guilty" of violating HRS § 291C-32(a)(3)(A); (2) the district court "had no basis not to dismiss the State's case with prejudice"; and (3) the district court "intentionally lead [sic] and testified for the State's sole witness[.]"

Upon carefully reviewing the record and briefs submitted by the parties and having duly considered the statutes, case law, and rules of evidence relevant to the arguments advanced by the parties, we disagree with all three of Kim's points of error.

We observe, however, that violation of HRS § 291C-32(a)(3)(A), the offense Kim was found "guilty" of violating, is punishable by a fine only, HRS § 291C-161(b) (Supp. 2005),^{3/} and, consequently, is classified as a civil traffic

^{2/}(...continued)

succeeding paragraphs.

^{3/} HRS § 291C-161(b) (Supp. 2005) provides now, as it did when Defendant-Appellant Anthony Kim was sentenced, as follows:

Penalties.

(b) Except as provided in subsection (c) every person who violates any provision of this chapter for which another penalty is not provided shall be fined:

- (1) Not more than \$200 for a first conviction thereof;
- (2) Not more than \$300 for conviction of a second offense committed within one year after the date of the first offense; and

(continued...)

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infraction. See HRS § 291D-2 (1993 & Supp. 2005); State v. Rees, 107 Hawai'i 508, 519, 115 P.3d 687, 698 (App. 2005). Therefore, the district court's Judgment that found Kim "guilty" of the offense is erroneous.

Accordingly, we vacate that part of the Judgment that found Defendant-Appellant Anthony Kim "guilty" of disregarding a red signal, in violation of Hawaii Revised Statutes § 291C-32(a)(3)(A), and remand for entry of an amended judgment in favor of Plaintiff-Appellee State of Hawai'i that complies with Hawaii Revised Statutes chapter 291D.

DATED: Honolulu, Hawai'i, February 28, 2006.

On the briefs:

Anthony Kim,
defendant-appellant, pro se.

Loren J. Thomas,
deputy prosecuting attorney,
City and County of Honolulu,
for plaintiff-appellee.

James L. Burns
Corinne K. A. Watanabe
Craig H. Nakamura

^{2/}(...continued)

(3) Not more than \$500 for conviction of a third or subsequent offense committed within one year after the date of the first offense;

provided that upon a conviction for a violation of section 291C-12, 291C-12.5, 291C-12.6, or 291C-95, the person shall be sentenced in accordance with that section.