

NO. 26703

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
KENNETH GUIDO, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
(CASE NO. 03-104778)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Kenneth Guido (Guido) appeals from the Judgment filed on June 25, 2004 in the District Court of the Second Circuit, Wailuku Division (district court).^{1/} After a bench trial, the district court found Guido guilty of Criminal Contempt of Court, in violation of Hawaii Revised Statutes (HRS) § 710-1077 (1993), and sentenced him to a fine of \$600, a bench warrant fee of \$50, and a Criminal Injury Compensation Fund fee of \$25.

On appeal, Guido argues that he should be acquitted and his conviction reversed because (1) the evidence presented at his trial was insufficient to support a finding that he acted

^{1/} The Honorable Rhonda I. L. Loo presided.

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knowingly with respect to all elements of the offense; (2) the State had the burden to prove and did not prove that his failure to appear in court was voluntary, pursuant to HRS § 702-200 (1993); and (3) the district court's finding that he did not meet his burden of proof of an affirmative defense under HRS Chapter 704 (Penal Responsibility and Fitness to Proceed) was inconsistent with the uncontroverted evidence he presented at trial and with the court's own Findings of Fact.

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

(1) Given that Guido admitted he knew he had the hearing on November 25, 2003 and yet did not appear on that date, there was sufficient evidence to support the district court's determination that he did knowingly disobey the mandate.

(2) Hawaii Revised Statutes § 702-200(2) provides where "a physical or mental disease, disorder, or defect . . . precludes or impairs a voluntary act or a voluntary omission," the defense should be construed according to HRS Chapter 704, and HRS § 704-402(1) (1993) states that "[p]hysical or mental disease, disorder, or defect excluding responsibility is an affirmative defense." As Guido himself indicates, HRS § 701-115(3)(a) (1993) provides that a defense is an affirmative defense if it is specifically so designated by the Hawaii Penal

Code or another statute. Therefore, it was Guido's burden to assert the defense described in HRS § 702-200.

(3) Regardless, the district court held in its Conclusions of Law that HRS § 704-401 (1993) did not apply to the instant case since Guido did not actually contend that his illness negated his mens rea. "Commentary on § 704-400" (1993), HRS § 704-401, and "Commentary on § 704-401" (1993).

(4) The district court's determination that Guido did not meet his burden of proof of an affirmative defense under HRS Chapter 704 was not inconsistent with the uncontroverted evidence Guido presented at trial and with the court's own Findings of Fact. The district court found, based on Guido's own admission that he knew he had a court date on November 25, 2003 and his testimony that he did not appear for the hearing because he was sick, that Guido knowingly committed the offense. Although Guido attempted to exculpate himself via HRS § 704-402, the district court held that that defense was inapplicable, pursuant to HRS § 704-401. As Guido cited no other statute in his defense, the district court properly held that Guido knowingly committed the offense.

Therefore,

IT IS HEREBY ORDERED that the Judgment filed on June 25, 2004 in the District Court of the Second Circuit, Wailuku Division, is affirmed.

DATED: Honolulu, Hawai'i, April 21, 2006.

On the briefs:

David A. Sereno
for Defendant-Appellant.

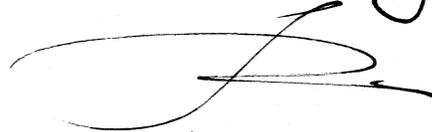
Arleen Y. Watanabe,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellee.



Acting Chief Judge



Associate Judge



Associate Judge