NO. 26895

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
JUSTIN A. SHORES, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT,
EWA DIVISION
(HPD TRAFFIC NO. 5579394MO)

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

Defendant-Appellant Justin A. Shores (Shores) appeals from the Judgment entered on September 22, 2004 in the District Court of the First Circuit, Ewa Division (district court).[1] On appeal, Shores argues that the district court erred in granting the oral motion of the State of Hawai'i (State) to set aside Shores' deferred acceptance of nolo contendere (DANC) plea as (1) no written motion was timely filed and (2) the State violated Shores' right to due process under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 5, of the Hawai'i Constitution.

On August 6, 2003, Shores was charged, via a Complaint & Summons, with reckless driving in violation of Hawaii Revised

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[1] Per diem District Court Judge Philip Doi presided.

Statutes (HRS) § 291-2 (Supp. 2005). On October 6, 2003, Shores appeared with counsel before the district court, entered a plea of no contest, and moved for a DANC plea. The district court deferred acceptance of Shores' plea for a period of six months on the following terms and conditions:

(1) Remain arrest and conviction free for six months;

(2) Pay a fine of $125 to the State General Fund;

(3) Pay $7 to the Driver Education Trust Fund; and

(4) Pay $25 in court costs.

The district court set a date of March 17, 2004 for proof of compliance.

On March 17, 2004, Shores appeared pro se before the district court. The district court probation office submitted a report that Shores had incurred a subsequent arrest involving two separate charges: (1) driving under the influence of an intoxicant and (2) having a car with tinted windows. Shores' arrest had occurred on February 1, 2004 -- within the six-month deferral period. The State made an oral motion to set aside Shores' DANC plea. The district court referred Shores to the Office of the Public Defender for legal assistance and continued the hearing on the State's motion to set aside Shores' DANC plea.

On April 19, 2004, Shores filed an opposition memorandum to the State's motion to set aside the DANC plea. Shores made two arguments. First, he argued that the district court lacked jurisdiction to set aside his DANC plea because the State's lack of filing a written motion failed to toll the six-month deferral period. Second, Shores argued that even if the district court retained jurisdiction, the State failed to provide him with proper notice of the motion. On September 8, 2004, the State filed its reply memorandum. On September 22, 2004, the district court granted the State's motion to set aside Shores' DANC plea.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues as raised by the parties, we conclude:

(1) The district court did not abuse its discretion in granting the State's oral motion to set aside Shores' DANC plea. Hawaii Revised Statutes (HRS) §§ 853-1 (1993 & Supp. 2005) and 853-3 (1993); State v. Kaufman, 92 Hawai'i 322, 991 P.2d 832 (2000).

(2) Shores had reasonable and adequate notice of the State's motion to set aside the DANC plea and an opportunity to be heard. Evans v. Takao, 74 Haw. 267, 282, 842 P.2d 255, 262 (1992).

Based on the foregoing, the Judgment filed on September 22, 2004 in the District Court of the First Circuit, Ewa Division, is affirmed.
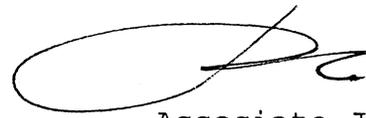
DATED: Honolulu, Hawai'i, August 22, 2006.

On the briefs:

Marcus L. Landsberg IV,
Deputy Public Defender,
for Defendant-Appellant.

Ryan Yeh,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

James S. Burns
Chief Judge

Associate Judge

Daniel R. Foley
Associate Judge