

NO. 27405

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
DANIEL SHIDAKI, Defendant-Appellant

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APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 03-1-1167)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Daniel Shidaki (Shidaki) appeals from the Judgment filed on June 15, 2005 in the Circuit Court of the First Circuit (circuit court).^{1/} A jury found Shidaki guilty of Theft in the Second Degree, in violation of Hawaii Revised Statutes (HRS) § 708-831(1)(b) (Supp. 2004). The circuit court sentenced Shidaki to a five-year term of incarceration, with a mandatory minimum term of one year and eight months as a repeat offender, and ordered Shidaki to pay a fine of \$3,432.84.

On appeal, Shidaki argues:

(1) The circuit court abused its discretion when it allowed the case to proceed to trial, even though the court learned during the hearing on Shidaki's motion in limine that he had filed a complaint against his court-appointed counsel, Jeffrey A. Hawk (Hawk), with the Office of Disciplinary Counsel

^{1/} The Honorable Michael D. Wilson presided.

(ODC). Shidaki argues that the circuit court should have either (a) continued the trial date or (b) allowed him to proceed without an attorney.

(2) The circuit court abused its discretion when, without conducting an evidentiary hearing, it denied Shidaki's requests (a) to obtain a new attorney or (b) to allow him to proceed without an attorney.

Based on the foregoing, Shidaki asserts that his conviction should be vacated and the case remanded for a new trial.

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

(1) The circuit court did not abuse its discretion when it allowed Shidaki's case to proceed to trial. Shidaki never requested a continuance from the circuit court. Assuming arguendo that Shidaki had moved for a continuance, the circuit court did not commit an abuse of discretion because (1) Shidaki's decision whether to request new counsel was not contingent upon ODC's response; (2) Shidaki does not explain how he suffered any prejudice as a result of the circuit court's denial of his motion; and (3) Shidaki notified the circuit court of his ODC complaint only two days before his trial. State v. Torres, 54 Haw. 502, 504-05, 510 P.2d 494, 496 (1973); State v. Lee, 9 Haw. App. 600, 603, 856 P.2d 1279, 1281-82 (1993) (holding that a

"motion for continuance is addressed to the sound discretion of the trial court, and the court's ruling will not be disturbed on appeal absent a showing of abuse of that discretion"); State v. Crisostomo, 94 Hawai'i 282, 287, 12 P.3d 873, 878 (2000) (holding that, "[g]enerally, to constitute an abuse[,] it must appear that the court clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant").

(2) The circuit court did not abuse its discretion by not allowing Shidaki to proceed to trial *pro se*. Shidaki did not request to proceed *pro se* or to replace Hawk prior to trial. In fact, at the hearing on the motion in limine, he clearly stated that he did not know whether he wanted to replace Hawk. Office of Disciplinary Counsel v. Cusmano, 93 Hawai'i 411, 415, 4 P.3d 1109, 1113 (2000); see HRS § 605-2 (1993).

(3) The circuit court did not abuse its discretion by not holding an evidentiary hearing on Shidaki's request for new counsel because there was not good cause to do so. Furthermore, the circuit court fulfilled its obligation to conduct a "penetrating and comprehensive examination" of Shidaki regarding Shidaki's request for new counsel. State v. Soares, 81 Hawai'i 332, 354-57, 916 P.2d 1233, 1255-58 (App. 1996); see also State v. Kossman, 101 Hawai'i 112, 119-20, 63 P.3d 420, 427-28 (App. 2003) (holding that even without the penetrating and

comprehensive examination required of the court by Soares, the circuit court did not abuse its discretion by denying Kossman's request for substitute counsel because it was clear that there was no good cause for the court to do so); State v. Ahlo, 2 Haw. App. 462, 464 & 468-69, 634 P.2d 421, 423 & 425-27 (1981) (holding that the circuit court did abuse its discretion by denying appellant's counsel's request to withdraw and denying appellants' request to discharge their counsel).

4) The circuit court did not abuse its discretion when, during trial, the court denied Shidaki's request to obtain a new attorney without allowing Shidaki to proceed pro se. At no point during the trial did Shidaki refuse to continue to trial with Hawk representing him. State v. Char, 80 Hawai'i 262, 268-69, 909 P.2d 590, 596-97 (App. 1995).

Therefore,

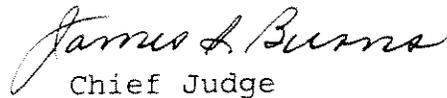
IT IS HEREBY ORDERED that Judgment filed on June 15, 2005 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, July 13, 2006.

On the briefs:

Brandon K. Flores
for Defendant-Appellant.

Daniel H. Shimizu,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.


Chief Judge


Associate Judge


Associate Judge