

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27525

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
HENRY L. KAISER, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 03-1-1404)

K. HAMAKAHO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

SUMMARY DISPOSITION ORDER

(By: Lim, Presiding Judge, Foley and Nakamura, JJ.)

Defendant-Appellant Henry L. Kaiser (Kaiser) appeals from the Judgment in Cr. No. 03-1-1404^{1/} entered on August 29, 2005 in the Circuit Court of the First Circuit.^{2/} Kaiser pled no contest to one count of Theft in the Second Degree, in violation of Hawaii Revised Statutes (HRS) § 708-831(1)(b) (Supp. 2005).

On June 26, 2003, the State charged Kaiser via an Indictment with one count of Theft in the Second Degree. The indictment alleged that on or about January 23, 2002 Kaiser did obtain or exert control over the property of Selective Stone, LLC, the value of which exceeded \$300, by deception, with intent to deprive Selective Stone, LLC, of the property.

^{1/} In 2003-2004, the State of Hawai'i filed two criminal cases in the Circuit Court of the First Circuit against Henry L. Kaiser (Kaiser): (1) Cr. No. 03-1-1404 and (2) Cr. No. 04-1-0122. For purposes of this case (Cr. No. 03-1-1404), Kaiser's issues on appeal relating to Cr. No. 04-1-0122 are not before this court and therefore will not be addressed.

^{2/} The Honorable Steven S. Alm presided.

On February 3, 2004, Kaiser entered a plea of no contest. Kaiser failed to appear at his November 22, 2004 sentencing hearing, and his counsel made no representation regarding Kaiser's absence. The circuit court noted, for the record, that Kaiser had failed to participate in a presentence interview by missing three scheduled appointments. The circuit court issued a bench warrant for Kaiser. Some eight months later, Kaiser was arrested on July 13, 2005.

On August 29, 2005, the circuit court sentenced Kaiser to a term of imprisonment of five years and ordered him to pay a \$100 criminal victims compensation fee. Kaiser timely appealed on September 28, 2005.

On appeal, Kaiser argues that the circuit court failed to properly consider the factors set forth in HRS § 706-606 (1993) when it sentenced him to a five-year term of imprisonment.

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:

Although a sentencing court is obligated to consider the factors set forth in HRS § 706-606 when it imposes multiple terms of imprisonment concurrently or consecutively, the court is not required to orally address every factor stated in HRS § 706-606 at the time of sentencing. Additionally, HRS § 706-606

contains no requirement that the court expressly recite its findings on the record for each of the factors set forth in the statute. Here, Kaiser's extensive criminal record, his failure to attend three scheduled presentence report appointments and the first scheduled sentencing hearing, and his eight-month disappearance afforded the circuit court sufficient latitude to sentence Kaiser accordingly. Absent an apparent abuse of discretion, the sentencing court will not be reversed. HRS § 706-606; HRS § 706-668.5(2) (1993); State v. Kahapea, 111 Hawai'i 267, 279, 141 P.3d 440, 452, reconsideration denied, 111 Hawai'i 316, 141 P.3d 489 (2006); State v. Sinagoga, 81 Hawai'i 421, 428, 918 P.2d 228, 235 (App. 1996); Barnett v. State, 91 Hawai'i 20, 26, 979 P.2d 1046, 1052 (1999); State v. Gaylord, 78 Hawai'i 127, 144, 890 P.2d 1167, 1184 (1995).

Therefore,

The Judgment filed on August 29, 2005 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, October 6, 2006.

On the briefs:

Shawn A. Luiz
for Defendant-Appellant
(on the opening brief).

Anne K. Clarkin,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Mary Ann Barnard
for Defendant-Appellant
(on the reply brief).



Presiding Judge



Associate Judge



Associate Judge