

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 26750

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

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
MANUEL ANCHETA, Defendant-Appellant

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CR. NO. 97-0776(3))

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Manuel Ancheta (Ancheta) appeals from the "Order Denying Motion to Reconsider the Denial of Defendant's Motion to Withdraw No-Contest Plea and Judgment" (Order Denying Motion for Reconsideration) filed on July 22, 2004, in the Circuit Court of the Second Circuit (circuit court). Ancheta was charged by indictment with second degree theft, in violation of Hawai'i Revised Statutes (HRS) § 708-831(1)(b) (1993). On September 8, 1997, he pleaded no contest before the Honorable Boyd P. Mossman to the reduced charge of third degree theft. On November 4, 1998, Ancheta was sentenced to a one-year term of probation, a suspended six-month term of jail confinement, 75 hours of community service, a \$300 fine, and a \$50 criminal injury compensation fee. A Judgment reflecting Ancheta's conviction and sentence was entered on that same date.

On September 29, 1999, the circuit court issued a bench warrant in connection with an order to show cause why Ancheta's

probation should not be revoked for violation of the terms of probation. On March 14, 2000, the circuit court filed an order revoking Ancheta's probation and resentencing him to pay a fine of \$300 and to perform 60 hours of community service. On November 16, 2000, Ancheta filed documents establishing his compliance with the terms of his sentence.

On April 27, 2004, Ancheta filed a "Motion to Withdraw No-Contest Plea and Judgment" (Motion to Withdraw). In his Motion to Withdraw, Ancheta argued that his no contest plea was unknowing and involuntary because, although the circuit court advised Ancheta that he was giving up his "right to trial by jury," the court never explained what a jury trial entailed. On May 26, 2004, the circuit court filed its "Order Denying Defendant's Motion to Withdraw No-Contest Plea and Judgment" (Order Denying Motion to Withdraw). On the same date, Ancheta filed a "Motion to Reconsider the Denial of Defendant's Motion to Withdraw No-Contest Plea and Judgment" (Motion for Reconsideration). In his Motion for Reconsideration, Ancheta reasserted his claim that his plea was invalid because he had not knowingly waived his right to jury trial. Ancheta additionally argued that he was entitled to withdraw his plea because he was not advised of the nature of the charge to which he pleaded. On July 22, 2004, the circuit court filed its Order Denying Motion For Reconsideration. On August 9, 2004, Ancheta filed his notice

of appeal from the circuit court's Order Denying Motion For Reconsideration.¹

On appeal, Ancheta argues that the circuit court erred in denying his Motion to Withdraw and his Motion for Reconsideration. He contends that allowing him to withdraw his no contest plea is necessary to correct manifest injustice. In particular, Ancheta maintains that his no contest plea was involuntary because the circuit court failed to explain what a jury trial entailed in obtaining Ancheta's waiver of his right to a jury trial. We disagree with Ancheta's arguments and affirm the circuit court's Order Denying Motion For Reconsideration.

After a careful review of the record and the briefs submitted by the parties, we hold as follows:

Ancheta has failed to meet his burden of establishing that permitting him to withdraw his no contest plea is necessary to correct manifest injustice. Hawai'i Rules of Penal Procedure (HRPP) Rule 32(d) (2004); State v. Nguyen, 81 Hawai'i 279, 286-87, 916 P.2d 689, 696-97 (1996). The circuit court's plea colloquy satisfied the requirements of HRPP Rule 11 (2006). In particular, the court complied with HRPP Rule 11(c)(4), which requires the court to address the defendant in open court and determine that he understands "that if he pleads guilty or nolo contendere there will not be a further trial of any kind, so that

¹ The Honorable Joseph E. Cardozo issued the May 26, 2004, "Order Denying Defendant's Motion to Withdraw No-Contest Plea and Judgment" and the July 22, 2004, "Order Denying Motion to Reconsider the Denial of Defendant's Motion to Withdraw No-Contest Plea and Judgment."

by pleading guilty or nolo contendere he waives the right to trial."

The circuit court advised Ancheta, in relevant part, as follows:

Now, under the Constitution of the United States, as well as the State of Hawaii, you have rights which are guaranteed you. These rights include the right to a public trial, the right to speedy trial and the right to a trial by jury.

You also have the right to question and cross-examine witnesses who testify against you. You can call your own witnesses to testify for you.

You're presumed innocent unless and until proved guilty beyond a reasonable doubt by the State. Therefore, at a trial you don't have to do anything or say anything. You can just sit and remain silent and require the State to carry their burden of proving you guilty beyond a reasonable doubt.

You and your attorney can decide whether or not you will call any witnesses, and if so, who they will be; what defenses would be most appropriate under the facts and circumstances of this charge; and whether or not you should testify.

These are all rights which are guaranteed you. Do you understand these rights?

Ancheta responded that he understood these rights. In addition, at the end of the plea colloquy, Ancheta advised the court that he had no questions or comments with regard to his no contest plea or the no contest plea form that he had signed.

We reject Ancheta's claim that his no contest plea was invalid because the plea colloquy subsequently recommended by the Hawai'i Supreme Court in State v. Friedman, 93 Hawai'i 63, 69, 996 P.2d 268, 274 (2000), was not followed. Friedman involved the defendant's waiver of his right to a jury trial in favor of a bench trial, not the waiver of a right to trial in the context of a guilty or no contest plea. Id. at 65-66, 996 P.2d at 270-71.

In addition, the court in Friedman declined to impose a bright line rule that a colloquy advising the defendant of the four aspects of a jury trial was constitutionally required in every case. Id. at 69, 996 P.2d at 274.

Moreover, Ancheta did not testify at the hearings on his Motion to Withdraw and Motion for Reconsideration, or even submit his own sworn statement, in support of his claim that he did not understand the meaning of his right to a jury trial at the time of his plea. Nor did Ancheta make himself available for cross-examination on his claim. We conclude that Ancheta failed to satisfy his burden of showing that allowing him to withdraw his no contest plea was necessary to correct manifest injustice. The circuit court did not abuse its discretion in denying Ancheta's Motion to Withdraw and his Motion For Reconsideration. See Nguyen, 81 Hawai'i at 286-87, 916 P.2d at 696-97.

IT IS HEREBY ORDERED that the July 22, 2004, "Order Denying Motion to Reconsider the Denial of Defendant's Motion to Withdraw No-Contest Plea and Judgment" entered by the Circuit Court of the Second Circuit is affirmed.

DATED: Honolulu, Hawai'i, February 5, 2007.

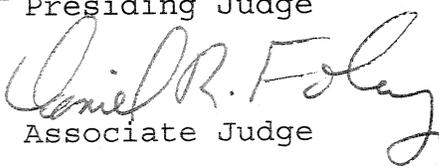
On the briefs:

David A. Sereno
James R. Rouse
Thomas Kolbe
for Defendant-Appellant

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



Presiding Judge



Associate Judge



Associate Judge