

NO. 27020

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
BRANDON K. MATHIAS, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CR. NO. 02-1-0566(3))

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STATE OF HAWAI'I

SUMMARY DISPOSITION ORDER

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

Brandon Keali'i Mathias (Defendant) appeals the October 26, 2004 judgment of the Circuit Court of the Second Circuit (circuit court)¹ that convicted him of burglary in the first degree and theft in the second degree.

After a meticulous review of the record and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties, we dispose of Defendant's points of error on appeal as follows:

1. Given the prerogative of the jury to determine the credibility of the witnesses and the weight of the evidence, State v. Taliferro, 77 Hawai'i 196, 201, 881 P.2d 1264, 1269 (App. 1994), and to make all reasonable and rational inferences under the facts in evidence, including circumstantial evidence, State v. Eastman, 81 Hawai'i 131, 135, 913 P.2d 57, 61 (1996), we conclude there was substantial evidence to support the jury's verdicts. Tsugawa v. Reinartz, 56 Haw. 67, 71, 527 P.2d 1278,

¹ The Honorable Joseph E. Cardoza presided.

1282 (1974).

2. The record as currently constituted is inadequate to judge Defendant's claim of ineffective assistance of counsel.

We acknowledge . . . that not every trial record is sufficiently developed to determine whether there has been ineffective assistance of counsel; indeed, a defendant is often only able to allege facts that, if proved, would entitle him or her to relief. Therefore, we hold that where the record on appeal is insufficient to demonstrate ineffective assistance of counsel, but where: (1) the defendant alleges facts that if proven would entitle him or her to relief, and (2) the claim is not patently frivolous and without trace of support in the record, the appellate court may affirm defendant's conviction without prejudice to a subsequent [Hawai'i Rules of Penal Procedure (HRPP)] Rule 40 petition on the ineffective assistance of counsel claim.

State v. Silva, 75 Haw. 419, 439, 864 P.2d 583, 592-93 (1993)

(footnote omitted).

Therefore,

IT IS HEREBY ORDERED that the October 26, 2004 judgment of the circuit court is affirmed without prejudice to a subsequent HRPP Rule 40 petition on the ineffective assistance of counsel claim.

DATED: Honolulu, Hawai'i, March 23, 2007.

On the briefs:

Jeannie J. Park,
for Defendant-Appellant.

Gerald K. Enriques,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellee.


Erinne K. Wetanala
Presiding Judge


Associate Judge


Craig W. Nakamura
Associate Judge