

NO. 28027

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
RICHARD D. KAHLE, Defendant-Appellant

EMILIANO
GIENK, APPELLATE COURTS
STATE OF HAWAII

2007 MAY 17 AM 7:45

FILED

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT,
WAILUKU DIVISION
(Case No. 00536998M)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding J., Nakamura, and Fujise, JJ.)

Defendant-Appellant Richard D. Kahle (Kahle) appeals from the judgment entered by the District Court of the Second Circuit¹ (district court) on April 21, 2006, convicting and sentencing him for operating a vehicle under the influence of an intoxicant, in violation of Hawaii Revised Statutes § 291E-61 (Supp. 2006).

Kahle urges us to reverse his conviction on grounds that he received ineffective assistance of trial counsel. Specifically, Kahle argues that: (1) "[Kahle's] Doctor should have been called to testify as a witness regarding [Kahle's] health conditions that affected his performance on the field sobriety maneuvers[;]" and (2) "[t]he Maui Grown Market employee who served [Kahle] the poppy seed bagel [at lunch] should have

¹ The Honorable Jan Apo presided.

been called to testify at trial" to explain the presence of opiates in Kahle's system.

As to Kahle's first argument, the Hawai'i Supreme Court has held that "[i]neffective assistance of counsel claims based on the failure to obtain witnesses must be supported by affidavits or sworn statements describing the testimony of the proffered witnesses." State v. Richie, 88 Hawai'i 19, 39, 960 P.2d 1227, 1247 (1998) (citing State v. Fukusaku, 85 Hawai'i 462, 481, 946 P.2d 32, 51 (1997)). Kahle did not provide any sworn statement or affidavit from his doctor regarding the testimony his doctor would have given, and there is no evidence in the record indicating what the doctor would have testified to if called as a witness. As to Kahle's second argument, the Hawai'i Supreme Court has held that

[t]he defendant has the burden of establishing ineffective assistance of counsel and must meet the following two-part test: 1) that there were specific errors or omissions reflecting counsel's lack of skill, judgment, or diligence; and 2) that such errors or omissions resulted in either the withdrawal or substantial impairment of a potentially meritorious defense.

State v. Wakisaka, 102 Hawai'i 504, 514, 78 P.3d 317, 327 (2003) (citation and footnote omitted). Based on our review of the record, we conclude that Kahle failed to meet his burden of establishing that his trial counsel committed any specific errors

or omissions reflecting a lack of skill, judgment, or diligence by failing to call the Maui Grown Market employee as a witness.

Accordingly, we affirm the judgment entered by the district court on April 21, 2006.

DATED: Honolulu, Hawai'i, May 17, 2007.

On the briefs:

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for defendant-appellant.

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