

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER

NO. 28155

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.  
RUSSELL A. ROSEL, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CR. NO. 04-1-0176)

NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

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SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Foley and Nakamura, JJ.)

Defendant-Appellant Russell A. Rosel (Rosel) appeals from the Findings of Fact, Conclusions of Law and Order Denying Defendant's Motion to Withdraw Guilty Pleas and to Set Aside Judgment (Order), filed by the Circuit Court of the First Circuit (circuit court) on September 14, 2006.<sup>1</sup>

On January 29, 2004, Rosel was charged with four counts of Promoting a Dangerous Drug in the Second Degree in violation of Hawaii Revised Statutes (HRS) § 712-1242(1)(c) (1993) (counts I-IV), one count of Promoting a Dangerous Drug in the Third Degree in violation of HRS § 712-1243 (1993) (count V), and one count of Unlawful Use of Drug Paraphernalia in violation of HRS § 329-43.5(a) (1993) (count VI). Rosel pleaded guilty to all six counts in open court on July 25, 2005 (July 25, 2005 hearing).<sup>2</sup>

On June 20, 2006, the circuit court filed its Judgment of Conviction and Sentence, finding Rosel guilty of all charges and sentencing him to ten years of imprisonment on counts I through IV and five years of imprisonment on counts V and VI, with the sentences to be served concurrently.<sup>3</sup>

On July 31, 2006, Rosel filed a Motion To Withdraw Guilty Pleas and to Set Aside Judgment. After holding a hearing,

<sup>1</sup> The Honorable Steven S. Alm presided.

<sup>2</sup> The Honorable David Lo presided.

<sup>3</sup> The Honorable Steven S. Alm presided.

the circuit court entered its Order denying the motion and concluding that "under the totality of the circumstances Defendant Rosel made an informed decision when he intelligently, knowingly, and voluntarily waived his right to trial by jury or by the court."

On appeal, Rosel contends that "[t]he lower court erred when it denied Rosel's motion to withdraw his guilty plea on the grounds that Rosel's plea, based on the totality of circumstances, was made intelligently, knowingly and voluntarily." Specifically, Rosel claims that "[t]here is no way to be sure that Rosel fully understood . . . that he was giving up his right to have twelve members of the community judge him, that he was giving up his right to participate in the selection of these twelve members of the community, that he was giving up his right to have a unanimous verdict against him and that he was giving up his right to have the jury decide on his guilt or innocence."

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 raised by the parties, we resolve Rosel's point of error on appeal as follows:

At the July 25, 2005 hearing, the circuit court advised Rosel that he had "the right to a trial by jury," and Rosel acknowledged that he understood that he would be giving up that right by pleading guilty.<sup>4</sup> Accordingly, Rosel must show by a preponderance of the evidence that his waiver was nonetheless involuntarily given. State v. Barros, 105 Hawai'i 160, 168, 95 P.3d 14, 22 (App. 2004) (citing State v. Friedman, 93 Hawai'i 63, 68-69, 996 P.2d 268, 273-74 (2000)).

Rosel has failed to satisfy that burden. Other than pointing out that the circuit court did not examine him concerning the details of the right to trial by jury, Rosel does

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<sup>4</sup> Rosel also executed a written guilty plea form in which he acknowledged that he knew he had the right to a "public trial by jury or by the court[.]" and that he was waiving that right by pleading guilty.

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not cite to any "salient fact" calling into question the validity of his waiver of that right. Barros, 105 Hawai'i at 169, 95 P.3d at 23 (internal quotation marks and citations omitted). Nor have we detected any such facts in our own review of the record. Rosel, who acknowledged having attended the "first year" of community college, did not demonstrate any uncertainty or confusion when questioned by the circuit court at the July 25, 2005 hearing about his decision to plead guilty. Considering the totality of the circumstances, Rosel knowingly, intelligently and voluntarily waived his right to a jury trial, and his guilty pleas were therefore knowing, intelligent and voluntary. Barros, 105 Hawai'i at 169-70, 95 P.3d at 23-24. Accordingly, the circuit court did not abuse its discretion in denying Rosel's motion to withdraw his guilty plea.

Therefore,

IT IS HEREBY ORDERED that the Circuit Court of the First Circuit's September 14, 2006 Findings of Fact, Conclusions of Law and Order Denying Defendant's Motion to Withdraw Guilty Pleas and to Set Aside Judgment is affirmed.

DATED: Honolulu, Hawai'i, October 11, 2007.

On the briefs:

Emmanuel G. Guerrero,  
for Defendant-Appellant.

Loren J. Thomas,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for Plaintiff-Appellee.

*Man Richman*  
Chief Judge

*Daniel R. Foley*  
Associate Judge

*Craig H. Nakamura*  
Associate Judge