

NO. 28234

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
JAMES DAVID KALILI, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
North and South Kona Division
(Case Nos. 1558442MH, C06014612, C06014613, 1556197MH)

E.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant James David Kalili (Kalili), also known as James Kalili, appeals (1) the Judgment, filed on August 30, 2006, (2) the Findings of Fact; Pre-trial Motions; Conclusions of Law; Judgment, in 1556197MH and 1558442MH, filed on October 17, 2006, and (3) the Findings of Fact; Pre-trial Motions; Conclusions of Law; Judgment, in C06014612 and C06014613, filed on October 17, 2006, in the District Court of the Third Circuit, North and South Kona Division (district court).¹

Kalili was found guilty of two counts of being physically present in a county park when it was closed or restricted for public use, in violation of Hawaii County Code § 15-8, in 1556197MH and C06014612.

On appeal, Kalili states:

1. Did the trial judge's prejudice, reject defendant's HHCA or Article XII compact for hearing on a motion (HRPP RULE 44), constitute violation of his state/federal protection of the native Hawaiian race?
2. Did the trial judge's prejudice, reject defendant's Religious Freedom Act for hearing on a motion (HRPP RULE 44) where federal protection rights and state action may be proven?

¹ The Honorable Joseph P. Florendo presided.

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

We construe Kalili's arguments as (1) Kalili, as a native Hawaiian and homesteader under Article XII of the Hawaii State Constitution, is not subject to the laws of the State of Hawai'i or County of Hawai'i and (2) prosecution for the offenses that Kalili was charged with violated Article XII of the Hawaii Constitution and the American Indian Religious Freedom Act, codified as Title 42 U.S.C. § 1996.

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 Kalili's points of error as follows:

Magic Sands Beach Park is not designated as "Hawaiian home lands" within the meaning of the Hawaii Homes Commission Act § 204, P.L. 42 Stat. 108, as incorporated in the Hawaii State Constitution, Article XII.

Even if Magic Sands Beach Park was designated as Hawaiian home lands, Article XII does not prohibit "execution of State laws on Hawaiian home lands merely because the United States Congress has not expressed its consent to the exercise of such enforcement power." State v. Jim, 80 Hawai'i 168, 171-72, 907 P.2d 754, 757-58 (1995).

Kalili cites no law and we can find none that exempts Kalili from Hawai'i State law and the County of Hawai'i Code because he is native Hawaiian. Therefore, the district court did not err in denying Kalili's motions to dismiss.

We agree with the district court that Kalili failed to provide any evidence that he was exercising his religious rights as a native Hawaiian at the Magic Sands Beach Park on April 13 and May 10, 2006.

"When a criminal defendant claims to have been engaged in a constitutionally protected activity, the burden is placed on him or her to show that his or her conduct fell within the prophylactic scope of the constitution's provision." State v. Hanapi, 89 Hawai'i 177, 183, 970 P.2d 485, 491 (1999).

Kalili's motions to dismiss failed to set forth any facts which describe a native Hawaiian religious practice that he allegedly was engaged in on April 13 and May 10, 2006. The transcript of the July 13, 2006 hearing where Kalili argued his motion to dismiss and upon which he relies in his appeal is not part of the record. "The burden is upon appellant in an appeal to show error by reference to matters in the record, and he [or she] has the responsibility of providing an adequate transcript." Bettencourt v. Bettencourt, 80 Hawai'i 225, 230, 909 P.2d 553, 558 (1995) (quoting Union Bldg. Materials Corp. v. The Kakaako Corp. (1984)) (internal quotation marks omitted); Hawai'i Rules of Appellate Procedure Rule 10. Therefore, the district court did not err by denying Kalili's motions to dismiss.

Therefore,

IT IS HEREBY ORDERED that the Judgment, filed on August 30, 2006, the Findings of Fact; Pre-trial Motions; Conclusions of Law; Judgment, in 1556197MH and 1558442MH, filed on October 17, 2006, and the Findings of Fact; Pre-trial Motions; Conclusions of Law; Judgment, in C06014612 and C06014613, filed on October 17, 2006 in the District Court of the Third Circuit, North and South Kona Division are affirmed.

DATED: Honolulu, Hawai'i, August 7, 2008.

On the briefs:

James David Kalili,
Defendant-Appellant, pro se.



Chief Judge



Associate Judge



Associate Judge