

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28479

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

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
MATTHEW MURPHY aka Keoni Matthew Murphy,
Defendant-Appellant

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

2008 APR 18 AM 8:40

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 05-1-2248)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Matthew Murphy, aka Keoni Matthew Murphy, (Murphy) appeals from the Judgment of Conviction and Sentence filed on March 6, 2007 in the Circuit Court of the First Circuit (circuit court).¹ On December 1, 2006, Murphy entered a plea of no contest to one count of Robbery in the Second Degree, in violation of Hawaii Revised Statutes (HRS) § 708-841(1)(a) (1993).

On appeal, Murphy asserts² that he was denied effective assistance of counsel because his counsel (a) failed to provide Murphy with a written copy of the conditions and terms of his release and a written copy of the date of his review hearing, as Murphy had requested; (b) failed to include any new evidence in the March 20, 2007 Motion for Reconsideration of Sentence "to refute the court's perception of [Murphy's] non-compliance" with

¹ The Honorable Karl K. Sakamoto presided.

² Defendant-Appellant Murphy's opening brief fails to comply with Hawaii Rules of Appellate Procedure Rule 28(b)(4) in that each point of error does not state "(ii) where in the record the alleged error occurred; and (iii) where in the record the alleged error was objected to or the manner in which the alleged error was brought to the attention of the court or agency." Murphy's counsel is warned that future non-compliance with HRAP 28(b)(4) may result in sanctions against her.

the requirements of his supervised release; and (c) violated attorney-client privilege by attaching to the April 25, 2007 Second Motion for Reconsideration of Sentence, a confidential letter from Murphy, in which Murphy listed possible witnesses to call for the reconsideration hearing, without first informing Murphy that the letter would be made part of the record.

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, as well as the relevant statutory and case law, we resolve Murphy's points of error as follows:

(a) The failure of Murphy's counsel, if there was a failure, to give Murphy additional notice of his review hearing date in writing, after Murphy received notice from the circuit court, did not amount to ineffective assistance of counsel. State v. Antone, 62 Haw. 346, 348, 615 P.2d 101, 104 (1980).

(b) There is no indication in the record that Murphy's proposed witnesses could have offered any new evidence at a reconsideration hearing. Murphy and his attorney explained the circumstances of Murphy's failure to appear at the January review hearing. The circuit court was not impressed with Murphy's excuses. Producing witnesses to testify as to the same excuses the court had found unpersuasive would not constitute new evidence for a reconsideration hearing. State v. Oughterson, 99 Hawai'i 244, 255, 54 P.3d 415, 426 (2002); Sousaris v. Miller, 92 Hawai'i 505, 513, 993 P.2d 539, 547 (2000).

(c) Even if a communication subject to attorney-client privilege was improperly disclosed by Murphy's attorney, it was harmless error. State v. Sprattling, 99 Hawai'i 312, 320, 55 P.3d 276, 284 (2002). Murphy does not claim that the letter his counsel attached to the Second Motion for Reconsideration was the wrong letter -- his claim is that it was a letter Murphy did not

intend to submit to the circuit court. The circuit court summarily denied Murphy's second reconsideration motion, finding that there was no new evidence to consider. If the letter submitted to the circuit court was a violation of Murphy's attorney-client privilege, it clearly had no impact, good or bad, on the circuit court's denial of the Second Motion for Reconsideration.

Therefore,

The Judgment of Conviction and Sentence filed on March 6, 2007 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, April 18, 2008.

On the briefs:

Alexandra Scanlan
for Defendant-Appellant.

Anne K. Clarkin,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.


Daniel R. Foley
Presiding Judge


Craig H. Williams
Associate Judge


Auna D. S. Jimeno
Associate Judge