

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER

NO. 28931

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

MULINU'U P. STOWERS, aka Vena Peter Stowers  
Petitioner-Appellant,  
v.  
STATE OF HAWAI'I, Respondent-Appellee

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STATE OF HAWAI'I

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APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(SPECIAL PROCEEDINGS NO. 07-1-0370; CRIMINAL NO. 00-1-1495)

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Mulinu'u P. Stowers, aka Vena Peter Stowers, appeals from the Findings of Fact, Conclusions of Law, and Order Denying Petition for Post-Conviction Relief Without a Hearing, filed on December 7, 2007, in the Circuit Court of the First Circuit (circuit court).<sup>1</sup>

On July 19, 2000, Stowers was charged with two counts of Accomplice to Theft in the Second Degree, in violation of Hawaii Revised Statutes (HRS) §§ 702-221(1) and (2)(c) (1993), 702-222(1)(b) (1993), 708-830(2) (1993), and 708-831(1)(b) (Supp. 2008). On September 12, 2000, Stowers pleaded guilty to one of those counts.<sup>2</sup> The circuit court entered a Judgment on November 29, 2000 and sentenced him to, inter alia, five years of probation.

On November 5, 2007, Stowers filed a Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody (Petition). Citing State v. Sorino, 108 Hawai'i

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

<sup>2</sup> The Honorable Marie N. Milks presided.

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162, 118 P.3d 645 (2005), Stowers claimed his guilty plea was not made knowingly, voluntarily, and with an understanding of the nature of the charges and the consequences of his plea because the circuit court did not properly advise him of the immigration consequences of his plea as mandated by HRS § 802E-2 and Hawai'i Rules of Penal Procedure (HRPP) Rule 11(c)(5). Stowers requested that the judgment of conviction be vacated. The circuit court denied the petition without holding a hearing, concluding that Stowers had been given "the appropriate advisement" under HRS 802E-2 and HRPP Rule 11(c)(5).

On appeal, Stowers contends that the circuit court erred when it: (1) concluded that it had complied with the requirement of HRS § 802E-2 that it administer the statutory advisement on the record to Stowers, (2) denied the Petition by not relying upon Sorino under the doctrine of stare decisis, and (3) when it accepted Stowers's guilty plea because the plea was not entered into knowingly, voluntarily, and intelligently because the court did not properly advise Stowers about the possible consequences of the plea on his immigration status.

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 Stowers's points of error as follows:

(1) The circuit court did not err in concluding that it had complied with § HRS 802E-2 when it accepted Stowers's guilty plea. This case requires us to determine whether substantial compliance by the circuit court with the requirements

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of HRS § 802E-2 is sufficient, and if so, whether the advisement provided by the court here constituted substantial compliance. This question was left open in Sorino, since the advisement there did not substantially comply with the statute. 108 Hawai'i at 168, 118 P.3d at 651 ("the ICA's lead opinion concedes that the circuit court failed to recite the advisement to Sorino"); State v. Sorino, 108 Hawai'i 115, 124, 117 P.3d 847, 856 (App.) (Watanabe, J., concurring and dissenting) ("[u]nder either the literal or substantial compliance test, therefore, the circuit court's advisement was improper"), rev'd, State v. Sorino, 108 Hawai'i 162, 118 P.3d 645 (2005).

As Judge Watanabe observed,

The majority of states with statutes similar to HRS chapter 802E require substantial, not literal, compliance with the statutory advisement requirement. See, e.g., State v. Malcolm, 257 Conn. 653, 778 A.2d 134, 139 (2001); Slytman v. United States, 804 A.2d 1113, 1116 (D.C. 2002); State v. Francis, 104 Ohio St.3d 490, 820 N.E.2d 355, 363 (2004); Machado v. State, 839 A.2d 509, 513 (R.I. 2003). These courts hold that although verbatim recitation of the statutory advisement is preferable, the denial of a defendant's guilty or nolo contendere plea will be upheld on appeal as long as the defendant is substantially informed of the three specific immigration consequences of (1) deportation, (2) exclusion, and (3) denial of naturalization.

Sorino, 108 Hawai'i at 124, 117 P.3d at 856.

We adopt the majority view, and conclude that chapter 802E requires substantial, not literal, compliance with the requirement of advising the defendant in accordance with HRS § 802E-2. When interpreting statutes, this court's "foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. And we must read statutory language in the context of the entire statute and

construe it in a manner consistent with its purpose." Silva v. City and County of Honolulu, 115 Hawai'i 1, 6, 165 P.3d 247, 252 (2007) (citation omitted). The purpose of chapter 802E is reflected in HRS § 802E-1, which states that, in cases in which a conviction "is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States[,]. . . it is the intent of the legislature in enacting this section to promote fairness to such accused individuals by requiring in such cases that acceptance of a guilty plea or plea of nolo contendere be preceded by an appropriate warning of the special consequences for such a defendant which may result from the plea." Thus, the purpose of the statute is to ensure that the defendant is advised of those consequences prior to entering a plea, and as long as those consequences are sufficiently addressed, the purpose of the statute is accomplished. Put another way, there is nothing in section 802E-1 that suggests that any deviation from the text of 802E-2 (such as the court inadvertently referring to the "United States of America" during its colloquy with the defendant, rather than the "United States" as set forth in 802E-2) requires that the judgment be vacated.

The circuit court's advisement to Stowers substantially complied with HRS § 802E-2 because the court explicitly warned Stowers that he could be denied naturalization, and sufficiently warned Stowers of the other two possible immigration consequences of his plea. Deportation, exclusion from admission, and denial of naturalization are "distinct terms of art from immigration

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law." People v. Superior Court (Zamudio), 999 P.2d 686, 702 (Cal. 2000). "Deportation is the removal or sending back of an alien to the country from which he or she has come[.]" Id. at 702 (citation omitted). "'Exclusion' is 'being barred from entry to the United States.'" Id. (citation omitted). "'Naturalization' is a process by which an eligible alien, through petition to appropriate authorities, can become a citizen of the United States." Id. (citation omitted). Other jurisdictions have found substantial compliance where the words of the advisement were "the equivalent of the statutory language." People v. Gutierrez, 130 Cal. Rptr. 2d 429, 433 (Cal. Ct. App. 2003).

In this case, the circuit court expressly advised Stowers that his conviction could result in his "naturalization" being "prevent[ed]" by the Immigration and Naturalization Service (INS).<sup>3</sup> Moreover, the court advised him that INS could "have you return back to Western Samoa," which sufficiently described the consequence of deportation. See Zamudio, 999 P.2d at 702. The circuit court also advised Stowers that as a result of his conviction, the INS could "keep [him] out" if he "want[ed] to come back in[,]" which sufficiently described the consequence of exclusion. See id.; see also Gutierrez, 130 Cal. Rptr. 2d at 433

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<sup>3</sup> Stowers attached to his Petition a September 18, 2007 Decision on Application for Status as Permanent Resident, from the U.S. Citizenship and Immigration Services which states that "your application for status as a lawful permanent resident [is] denied. . . ." The Immigration and Nationality Act provides that "no person shall be naturalized unless he has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of this chapter." 8 United States Code § 1429. Thus, the circuit court's explicit warning that INS could "prevent" Stower's "naturalization" directly addressed this consequence of his guilty plea. Cf. State v. Malcolm, 778 A.2d 134, 141 (Conn. 2001) (noting that "the defendant is now threatened with deportation, a subject on which he was instructed").

& n.4 (holding admonishment that Appellant could be "denied re-entry" was a sufficient reference to "exclusion," and that there was no merit to Appellant's argument that the court erred by advising him only on the re-entry component of exclusion and not the possibility of "rescission of resident status" and "ineligibility to adjust one's status" because "a trial court does not have an obligation to advise on those immigration consequences that appellant may suffer other than the ones listed in [the statute]"); see also State v. Yanez, 782 N.E.2d 146, 153 (Ohio Ct. App. 2002) ("Substantial compliance means that under the totality of the circumstances the defendant subjectively understands the implications of his plea and the rights he is waiving." (citation omitted)).

(2) As we discuss in section 1, State v. Sorino did not require the circuit court to grant Stower's petition, and accordingly, this point of error is without merit.

(3) This point of error is without merit, since the record establishes that Stowers understood the possible immigration consequences of his plea. HRPP Rule 11(c)(5); Sorino, 108 Hawai'i at 168 n.7, 118 P.3d at 651 n.7; see also State v. Nguyen, 81 Hawai'i 279, 287, 916 P.2d 689, 697 (1996) ("absent a rule or statute, a court has no duty to warn defendants pleading guilty or 'no contest' about the possibility of deportation as a collateral consequence of conviction"). The circuit court orally advised Stowers of the immigration consequences of his plea, and Stowers answered "yes" when the court asked Stowers whether his attorney had gone "over that with

[him]." In addition, Stowers signed a written plea form which contained the advisement required by HRS § 802E-2.

Accordingly, the December 7, 2007 Findings of Fact, Conclusions of Law, and Order Denying Petition for Post-Conviction Relief Without a Hearing, filed on in the Circuit Court of the First Circuit, are hereby affirmed.

DATED: Honolulu, Hawai'i, March 25, 2009.

On the briefs:

James A. Stanton  
for Petitioner-Appellant

Debbie L. Tanakaya,  
Deputy Attorney General,  
for Respondent-Appellee

*Mum Redmond*

Chief Judge

*Corinne K. Watanabe*

Associate Judge

*Daniel R. Foley*

Associate Judge