

NO. 29639

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
MARTY JOSEPH MARTINS, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIFTH CIRCUIT
(CASE NO. 5P107-01928)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding Judge, Fujise and Leonard, JJ.)

Defendant-Appellant Marty Joseph Martins (**Martins**) appeals the Judgment, filed on December 18, 2008, in the District Court of the Fifth Circuit (**District Court**),^{1/} convicting him of Criminal Trespass in the Second Degree, in violation of Hawaii Revised Statutes (**HRS**) § 708-814(1)(a) (Supp. 2007).^{2/}

On appeal, Martins contends: (1) there was insufficient evidence to convict him of Criminal Trespass in the Second Degree because the premises were abandoned; and (2) his conduct should be excused because it was de minimus.

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 Martins's points of error as follows:

^{1/} The Honorable Trudy K. Senda presided.

^{2/} HRS § 708-814(1)(a) provides:

§ 708-814 Criminal trespass in the second degree.

(1) A person commits the offense of criminal trespass in the second degree if:

- (a) The person knowingly enters or remains unlawfully in or upon premises which are enclosed in a manner designed to exclude intruders or are fenced;

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(1) There was substantial evidence to convict Martins of Criminal Trespass in the Second Degree. Martins admitted that he did not have permission to live in the subject portable building. The portable building's doors and windows had been secured and they were checked periodically to ensure that the building was secure. Martins admitted that he moved into the portable building after living underneath the portable building for a few months.

The portable building was not abandoned because it was not "wholly forsaken or deserted." State v. Miner, 2 Haw. App. 581, 583, 637 P.2d 782, 784 (1981). Although a sliding glass door and several windows may have been broken when Martins began occupying the portable building, the County Park manager testified that the subject portable was maintained to keep intruders out and maintenance workers periodically checked the doors and windows.

(2) The District Court did not abuse its discretion by refusing to dismiss the charge on the grounds that the offense was de minimis. "The authority to dismiss a prosecution under HRS § 702-236 rests in the sound discretion of the trial court." State v. Ornellas, 79 Hawai'i 418, 423, 903 P.2d 723, 728 (App. 1995). Martins argues that there was no harm in his occupancy of the portable building and that his conduct was not the harm that the statute sought to prevent. Contrary to this argument, Martins conduct was precisely the type of conduct that HRS § 708-814(1)(a) sought to prevent - entry upon a premises that is enclosed in a manner designed to exclude intruders. Nor was Martins's entry fleeting; by his own admission, Martins lived in the building for several weeks before he was caught.

For these reasons, the District Court's December 18, 2008 Judgment is affirmed.

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

On the briefs:

Nelson W.S. Goo
for Defendant-Appellant

Tracy Murakami
for Plaintiff-Appellee

Corinne K. A. Watanabe
Presiding Judge

Arena On Fijim
Associate Judge

[Signature]
Associate Judge