

*** NOT FOR PUBLICATION ***

NO. 26164

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,

vs.

TAMI L. DAVIS, Defendant-Appellant.

K.H. AMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2005 OCT 18 AM 10:17

FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CASE NO. 1P102-06486; HPD CR. NO. 02240833)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Defendant-Appellant Tami Lynn Davis appeals from the District Court of the First Circuit's November 6, 2003 final judgment revoking Davis's probation and resentencing her to thirty days' incarceration.¹ Davis contends that the district court erred by: (1) imposing and refusing to vacate or modify the geographic restriction that prohibited Davis from being on public property within the Waikiki area, where she allegedly worked and resided, between 6 p.m. and 6 a.m.; and (2) revoking Davis's probation based on a violation of the geographic restriction.

Upon carefully reviewing the record and the briefs submitted by the parties, and having given due consideration to the arguments advocated and the issues raised, we hold as follows:

¹ The Honorable Russel Nagata presided over this matter.

(1) The district court did not abuse its discretion in imposing and refusing to modify or vacate the geographic restriction condition of probation for violation of Hawai'i Revised Statutes (HRS) § 712-1207(1) (Supp. 2000). See State v. Yamamoto, 79 Hawai'i 511, 514, 904 P.2d 525, 528 (1995) ("Whether probation should be granted, revoked, or modified lies solely within the discretion of the sentencing court."). First, the geographic restriction, mandated by HRS § 712-1207(5) (Supp. 2000),² was not overbroad nor unduly restrictive of Davis's rights, notwithstanding that Davis allegedly lived and worked in the restricted area. See HRS § 712-1207 cmt. ("Defendants that live in Waikiki and choose to remain in Waikiki during the prohibited hours are required to stay off the streets and sidewalks during those

² HRS § 712-1207(5) states:

(5) As an option to the mandatory term of thirty days imprisonment, if the court finds the option is warranted based upon the defendant's record, the court may place the defendant on probation for a period not to exceed six months, subject to the mandatory condition that the defendant observe geographic restrictions that prohibit the defendant from entering or remaining on public property, in Waikiki and other areas in the State designated by county ordinance during the hours from 6 p.m. to 6 a.m. Upon any violation of the geographic restrictions by the defendant, the court, after hearing, shall revoke the defendant's probation and immediately impose the mandatory thirty-day term of imprisonment. Nothing contained in this subsection shall be construed as prohibiting the imposition of stricter geographic restrictions under section 706-624(2)(h).

hours.”). Furthermore, Davis admitted that she understood and could abide by the restriction. Second, the geographic restriction is reasonably related to the purpose of rehabilitation because it prohibits her from being in an area where she was apprehended for prostitution, during times that the legislature and this court have found are most closely associated with prostitution. See State v. Stanford, 79 Hawai‘i 150, 154, 900 P.2d 157, 161 (1995) (“[A]lthough the restriction covers a large physical space (the ‘Waikiki area’), [the defendant] is only forbidden to enter this area during the hours most closely associated with the crime for which she was found guilty.”) (Emphasis added); 1998 Haw. Sess. Laws 149 (“The legislature finds that the level of prostitution in Waikiki has become intolerable.”).

- (2) The district court did not abuse its discretion in revoking Davis’s probation because Davis understood the conditions of her probation and inexcusably failed to comply with the geographic restriction, which was a substantial requirement of the probation, prior to the end of her probation period. See HRS § 712-1207(5) (“Upon any violation of the geographic restrictions by the defendant, the court, after hearing, shall revoke

the defendant's probation and immediately impose the mandatory thirty-day term of imprisonment."); HRS § 706-625 (Supp. 2000) ("The court shall revoke probation if the defendant has inexcusably failed to comply with a substantial requirement imposed as a condition of the order[.]"). Therefore,

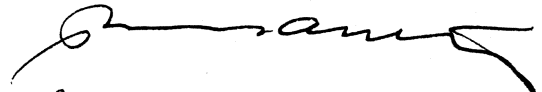
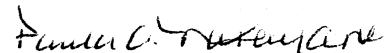

IT IS HEREBY ORDERED that the district court's November 6, 2003 final judgment revoking probation and resentencing Davis to thirty days incarceration is affirmed.

DATED: Honolulu, Hawai'i, October 18, 2005.

On the briefs:

Lesley N. Maloian,
Deputy Public Defender,
for defendant-appellant
Tami L. Davis

Alexa D.M. Fujise,
Deputy Prosecuting Attorney,
for plaintiff-appellee
State of Hawai'i



Kamae E. Duggan, Sr.