

NO. 27316

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

NEIL A. RHOADS, Defendant-Appellant.

APPEAL FROM THE SECOND CIRCUIT COURT  
(CR. NO. 04-1-0388)

EM. RIMANDO  
CLERK, APPELLATE COURTS  
STATE OF HAWAI'I

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FILED

SUMMARY DISPOSITION ORDER

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

In this tax fraud prosecution, defendant-appellant Neil A. Rhoads appeals from the second circuit court's May 12, 2005 judgment of conviction and concurrent sentences of five years' probation<sup>1</sup> for two counts each of false and fraudulent statements, Hawai'i Revised Statutes (HRS) § 231-36(a) (2001),<sup>2</sup> and attempted theft in the second degree, HRS §§ 708-831(1)(b) (Supp. 2002)<sup>3</sup> and 705-500 (1993).<sup>4</sup> On appeal, Rhoads argues

<sup>1</sup> The Honorable Joseph E. Cardoza presided over this matter.

<sup>2</sup> HRS § 231-36(a), entitled "False and fraudulent statements; aiding and abetting," provides in relevant part:

Any person who wilfully makes and subscribes any return, statement, or other document required to be made under [the Hawai'i Tax Code], which contains or is verified by a written declaration that it is true and correct as to every material matter, and which the person does not believe to be true and correct as to every material matter shall be guilty of a class C felony[.]

<sup>3</sup> HRS § 708-831(1)(b) provides in relevant part that "[a] person commits the offense of theft in the second degree if the person commits theft . . . . [o]f property or services the value of which exceeds \$300[.]"

<sup>4</sup> HRS § 705-500(2) provides in relevant part:

When causing a particular result is an element of the crime, a

(continued...)

that: (1) the jury instructions were plainly erroneous in that (a) the instruction defining "gross income" was prejudicially incomplete, (b) the instruction defining "property of another" was misleading, (c) there were no instructions concerning (i) Rhoads' reasonable reliance on professional tax advice, statements of the Internal Revenue Service, and United States Supreme Court opinions, and (ii) Rhoads' constitutional right to due process of law; and (2) his trial counsel provided ineffective assistance by (a) failing to propose proper jury instructions or object to erroneous instructions, (b) failing to subject plaintiff-appellee State of Hawaii's case to "stringent adversarial testing" regarding ownership of the allegedly stolen money and the computations of Rhoads' tax liability, and (c) failing to conduct an adequate investigation regarding ownership of the money.

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:

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<sup>4</sup>(...continued)

person is guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, the person intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result.

(1) When read as a whole, the circuit court's jury instructions were not erroneous, misleading, or prejudicially insufficient because the jury was adequately instructed that the requisite state of mind of both offenses was negated by a good-faith belief that the defendant was acting within the law. See State v. Gonsalves, 108 Hawai'i 289, 292, 119 P.3d 597, 600 (2005) ("When jury instructions or the omission thereof are at issue on appeal, the standard of review is whether, when read and considered as a whole, the instructions given are prejudicially insufficient, erroneous, inconsistent, or misleading." (Internal quotation marks and citations omitted.)); and

(2) Based upon the record, Rhoads' trial counsel did not commit errors or omissions reflecting lack of skill, judgment, or diligence. See State v. Wakisaka, 102 Hawai'i 504, 514, 78 P.3d 317, 327 (2003) ("The defendant has the burden of establishing ineffective assistance of counsel and must meet the following two-part test: 1) that there were specific errors or omissions reflecting counsel's lack of skill, judgment, or diligence; and 2) that such errors or omissions resulted in either the withdrawal or substantial impairment of a potentially meritorious defense."

(Internal quotation marks, citation, and footnote omitted; emphasis added.)). Therefore,

IT IS HEREBY ORDERED that the May 12, 2005 final judgment is affirmed.

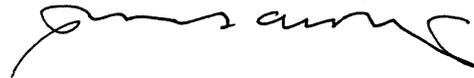
DATED: Honolulu, Hawai'i, August 3, 2006.

On the briefs:

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for defendant-appellant



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Deputy Attorney General,  
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James E. Duffy, Jr.