

NO. 29843

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
ROLANDO YAGIN, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT
(CR. NO. 08-1-0115)

SUMMARY DISPOSITION ORDER

(By: Nakamura, C.J., Foley and Fujise, JJ.)

Defendant-Appellant Rolando Yagin (Yagin) appeals from the Judgment of Conviction and Probation Sentence (Judgment) filed on April 23, 2009 in the Circuit Court of the Fifth Circuit (circuit court).¹ A jury convicted Yagin of Disorderly Conduct, in violation of Hawaii Revised Statutes (HRS) § 711-1101(1)(a) (1993 & Supp. 2009) (Count 1), and Resisting Arrest, in violation of HRS § 710-1026(1)(a) (1993 & Supp. 2009) (Count 2). The circuit court sentenced Yagin to pay a \$500 fine on Count 1 and to one year of probation, a jail term of 15 days, payment of various fees, and 100 hours of community service on Count 2.

On appeal, Yagin contends the circuit court (1) reversibly erred when it denied his request for substitute counsel and the motion to withdraw filed by his court-appointed counsel, Deputy Public Defender Dena Renti Cruz (Cruz), and (2) violated his right to effective assistance of counsel pursuant to

¹ The Honorable Randal G.B. Valenciano presided.

article I, section 14 of the Hawai'i Constitution and the Sixth Amendment to the United States Constitution.

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 Yagin's points of error as follows:

(1) The circuit court did not abuse its discretion in denying Yagin's request for substitute counsel. Regardless of whether the circuit court conducted a "penetrating and comprehensive examination" when Yagin first raised the question of substitute counsel, State v. Kane, 52 Haw. 484, 487, 479 P.2d 207, 209 (1971), the record shows that through subsequent hearings, the court obtained sufficient information to determine and rule on the basis of Yagin's request. See State v. Kossman, 101 Hawai'i 112, 119-21, 63 P.3d 420, 427-29 (App. 2003); United States v. John Doe No. 1, 272 F.3d 116, 123 (2d. Cir. 2001).

(a) Yagin's allegation that Cruz told him "that pretty much [he had] no case" and therefore she would not fully represent him does not rise to the level of good cause for substitution of counsel. See State v. Ahlo, 2 Haw. App. 462, 469, 634 P.2d 421, 426 (1981); McKee v. Harris, 649 F.2d 927, 932-33 (2d Cir. 1981).

(b) The circuit court adequately addressed the dispute between Yagin and Cruz over the relevance of certain evidence by holding a hearing and ruling on whether certain witnesses had relevant evidence and would be allowed to testify.

(2) For the same reasons given for upholding the circuit court's denial of Yagin's request for substitute counsel, we hold that the court did not abuse its discretion in denying Cruz's motion to withdraw.

(3) Yagin argues that he was denied effective assistance of counsel because Cruz failed to call alleged exculpatory witnesses at trial. We reject this claim because the record does not contain affidavits or sworn statements describing the testimonies of the proffered witnesses that are necessary to support it. See State v. Richie, 88 Hawai'i 19, 39, 960 P.2d

1227, 1247 (1998); see also State v. Fukusaku, 85 Hawai'i 462, 481, 946 P.2d 32, 51 (1997); State v. Aplace, 74 Haw. 54, 70, 837 P.2d 1298, 1307 (1992). However, we deny Yagin's ineffective assistance of counsel claim without prejudice to his raising it through a Hawai'i Rules of Penal Procedure Rule 40 petition. See State v. Silva, 75 Hawai'i 419, 439, 864 P.2d 583, 592-93 (1993).

Therefore,

IT IS HEREBY ORDERED that the Judgment of Conviction and Probation Sentence filed on April 23, 2009 in the Circuit Court of the Fifth Circuit is affirmed.

DATED: Honolulu, Hawai'i, February 17, 2011.

On the briefs:

Daniel G. Hempey
(Hempey & Meyers LLP)
for Defendant-Appellant.

Chief Judge

Tracy Murakami,
Deputy Prosecuting Attorney,
County of Kauai,
for Plaintiff-Appellee.

Associate Judge

Associate Judge