

NO. CAAP-11-0000793

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
DAVID M. SCHLESINGER, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
KONA DIVISION
(CR. NO. 3DTC-11-0498096)

SUMMARY DISPOSITION ORDER

(By: Nakamura, Chief Judge, Foley and Leonard)

Defendant-Appellant David M. Schlesinger (**Schlesinger**) appeals *pro se* from the Order and Notice of Entry of Order entered on September 30, 2011, in the District Court of the Third Circuit (**District Court**).¹ After a hearing on Schlesinger's motion to dismiss and a bench trial, Schlesinger was convicted of Driving a Motor Vehicle Without a Driver's License, in violation of HRS § 286-102 (2007).

Schlesinger raises two points of error on appeal, contending that: (1) when denying Schlesinger's motion to dismiss, the District Court "never address[ed] the essential elements raised in [Schlesinger's] motion to dismiss"; and (2) the District Court violated Schlesinger's due process rights when it proceeded to trial without first giving Schlesinger a chance

¹ The Honorable Joseph P. Florendo presided.

to review the court's written order denying his motion to dismiss.

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 Schlesinger's points of error as follows:

(1) Schlesinger provides no authority or cogent argument supporting his contention that the District Court's oral ruling and/or written order denying Schlesinger's motion was legally insufficient and we find none.

(2) No transcript was provided for the hearing on Schlesinger's motion to dismiss and subsequent trial. "The law is clear in this jurisdiction that the appellant has the burden of furnishing the appellate court with a sufficient record to positively show the alleged error." Union Bldg. Materials Corp. v. Kakaako Corp., 5 Haw. App. 146, 151, 682 P.2d 82, 87 (1984); see also State v. Hoang, 93 Hawai'i 333, 336, 3 P.3d 499, 502 (2000). Schlesinger provides an insufficient record to review the court's communication of its ruling on the motion to dismiss, to discern whether Schlesinger objected to proceeding with the bench trial, or to review whether further elucidation of the court's ruling might have aided Schlesinger in his defense to the charge of driving without a license. Indeed, Schlesinger provides no authority or cogent argument supporting his contention that the District Court deprived him of due process when it failed to allow him to review the court's written order denying his motion to dismiss, prior to the trial on his driving without a licence charge. We find none.

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

Therefore, the District Court's September 30, 2011
Order and Notice of Entry of Order is affirmed.

DATED: Honolulu, Hawai'i, November 30, 2012.

On the briefs:

David M. Schlesinger
Pro Se Defendant-Appellant

Chief Judge

Charlene Y. Iboshi
Prosecuting Attorney
Linda L. Walton
Deputy Prosecuting Attorney
for Plaintiff-Appellee

Associate Judge

Associate Judge