

Electronically Filed
Supreme Court
SCWC-12-0000514
18-DEC-2015
01:14 PM

SCWC-12-0000514

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Respondent/Plaintiff-Appellee,

vs.

STACY E. HARDOBY, Petitioner/Defendant-Appellant.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-12-0000514; CASE NO. 2DTC-11-014020)

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

Petitioner/Defendant-Appellant Stacy E. Hardoby ("Hardoby") seeks review of the Intermediate Court of Appeals' ("ICA") April 15, 2015 Judgment on Appeal, entered pursuant to its February 23, 2015 Summary Disposition Order, which affirmed the District Court of the Second Circuit's¹ ("district court") April 27, 2012 Judgment. The district court adjudged Hardoby guilty of Operating a Vehicle after License and Privilege Have Been Suspended or Revoked for Operating a Vehicle Under the Influence of an Intoxicant, in violation of Hawaii Revised Statutes § 291E-62 (2007 & Supp. 2010).

¹ The Honorable Blaine J. Kobayashi presided.

On certiorari, Hardoby contends that the ICA erred in holding that the district court properly permitted the State to amend the charge against Hardoby to allege the required mens rea for the offense. Hardoby argues that the defective charge rendered the district court without jurisdiction over the case, and, therefore, without jurisdiction to permit the State to amend the charge. We disagree. In State v. Schwartz, we recently held that "the failure of a charging instrument to allege an element of an offense does not constitute a jurisdictional defect that fails to confer subject-matter jurisdiction to the district court." State v. Schwartz, No. SCWC-10-199, 2015 WL 7370086, at *21 (Haw. Nov. 19, 2015). Accordingly, the ICA correctly concluded that the district court properly permitted the State to amend the charge.

IT IS HEREBY ORDERED that the ICA's Judgment on Appeal is affirmed.

DATED: Honolulu, Hawai'i, December 18, 2015.

James S. Tabe
for petitioner

/s/ Mark E. Recktenwald

Artemio C. Baxa
for respondent

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson

