

NO. 30650

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
KERRY N. SANDERS, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 04-1-2261)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Kerry N. Sanders appeals from the Judgment of Conviction and Sentence filed on July 6, 2010 in the Circuit Court of the First Circuit¹ (circuit court). The State of Hawaii charged Sanders with Murder in the Second Degree; however, a jury convicted him of the included offense of Manslaughter, in violation of Hawaii Revised Statutes § 707-702 (1993 & Supp. 2005).

On appeal Sanders contends:

(1) He was denied a fair trial because when a juror became ill and the circuit court excused the juror, the court denied Sanders the opportunity to question the other jurors regarding the impact of the juror's illness.

(2) The circuit court erred in refusing to give Sanders' requested jury instructions on Assault in the Second Degree and Assault in the Third Degree.

¹ The Honorable Karen S.S. Ahn presided.

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 conclude that Sanders' appeal is without merit.

Sanders' argument that he was denied a fair trial is unpersuasive, and he cites no supporting authority. There is absolutely nothing in the record to suggest that Sanders' right to a fair trial was in any way impaired by the juror's illness, the circuit court's excusing of the juror, and the court's refusal to question the remaining jurors regarding what impact the juror's leaving may have had on them.

As to the requested jury instructions on assault, assuming arguendo that such instructions should have been given, such error was harmless because the jury convicted Sanders of the greater offense of Manslaughter. State v. Haanio, 94 Hawai'i 405, 415-16, 16 P.3d 246, 256-57 (2001).

Therefore,

The Judgment of Conviction and Sentence filed on July 6, 2010 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, June 8, 2011.

On the briefs:

Keith S. Shigetomi
for Defendant-Appellant.

Brian R. Vincent,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Chief Judge

Associate Judge

Associate Judge