NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER

DISSENTING OPINION BY REIFURTH, J.

I do not agree that the Circuit Court erred in finding that Million knowingly and intelligently waived his right to counsel. Therefore, I respectfully dissent.

(1) With respect to Million's first point of error (waiver of right to counsel), *State v. Dickson* establishes, as a "guideline," a series of inquiries regarding relevant factors that courts should perform when inquiring whether a defendant, seeking to proceed pro se, is knowingly and intelligently waiving his right to counsel. 4 Haw. App. 614, 619-21, 673 P.2d 1036, 1041-42 (1983). *Dickson* clarifies that "[t]he record need not reflect a discussion between the court and a defendant illuminating every such factor," and adds that "the constitution does not prescribe a litany or ritual to which judges must comply." *Id.* at 620 & n.6, 621, 673 P.2d at 1042 & n.6.

The colloquy between the Circuit Court and Million reflects a lengthy examination of Million sufficient to ensure that he "ha[d] made a knowing and intelligent waiver" and was aware of "the dangers and disadvantages of self-representation" *Id.* at 621, 673 P.2d at 1042. The Circuit Court ensured that Million was presently free from the influence of any drugs, alcohol, and medications. The Circuit Court recited the charges against him, including the potential penalties, and advised, as a possible defense for Million, that the State must prove its case beyond a reasonable doubt. The Circuit Court also admonished Million that he would be bound to follow the court's rules.

In addition to advising him generally of his right to counsel, the Circuit Court specifically advised Million that he would probably receive better representation with counsel than without. Further, after Million acknowledged that "the odds [were] against [him]," the Circuit Court probed: "So despite the possible hazards of representing yourself, you're electing to represent yourself today?" Million replied that he was "clearly aware of the hazards." Finally, the Circuit Court explored Million's education and work experience to help assess whether

Million believed that he would represent himself adequately.

The Circuit Court did not make every particular inquiry suggested by *Dickson*, but it was not required to do so. It was required only to establish that Million understood the risks of self-representation and that his decision to do so was a knowing and voluntary one. On this record, I find that it "reflect[s] that the trial court has sufficiently examined the defendant." *Id.*

(2) Furthermore, with respect to Million's second point of error (erroneous jury instruction), I would conclude that although the standard jury instruction on self-defense given by the Circuit Court in this case, Hawai'i Standard Criminal Jury Instruction 7.01, does not precisely track the self-defense statute, HRS § 703-304 (1993), the instruction is sufficient as it accurately captures the requirement that the defendant's use of force be evaluated from the viewpoint of a reasonable person in the defendant's position under the circumstances of which defendant was aware or as he reasonably believed them to be. *See State v. Pond*, 118 Hawai'i 452, 469-70, 193 P.3d 368, 385-86 (2008); *State v. Augustin*, 101 Hawai'i 127, 127-28, 63 P.3d 1097, 1097-98 (2002).

Therefore, I would affirm the Circuit Court's December 16, 2010 Amended Judgment of Conviction and Probation Sentence.

Lawrence M Reifurth