

NO. CAAP-10-0000056

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
NICHOLAS D. ANDUHA, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 09-1-1501)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Nicholas Devin Anduha (**Anduha**) appeals from the September 7, 2010 Judgment of Conviction and Sentence entered against him by the Circuit Court of the First Circuit's (**Circuit Court**).¹

Anduha was charged with: two counts of Kidnapping, in violation of Hawaii Revised Statutes (**HRS**) § 707-720(1)(d) (Supp. 2010) and/or HRS § 707-720(1)(e) (Supp. 2010); two counts of Terroristic Threatening in the First Degree, in violation of HRS § 707-716(1)(e) (Supp. 2009); seven counts of Sexual Assault in the Second Degree, in violation of HRS § 707-731(1)(a) (Supp. 2010); and one count of Sexual Assault in the Third Degree, in violation of HRS § 707-732(1)(f) (Supp. 2010). After pleading guilty on all counts, Anduha filed a Motion To Withdraw Plea,

¹ The Honorable Karen S.S. Ahn presided.

which was denied by the Circuit Court. This timely appeal followed.

Anduha raises one point of error on appeal, contending that the Circuit Court erred when it denied the motion to withdraw his guilty plea.

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, we resolve Anduha's contentions as follows:

Citing State v. Gomes, 79 Hawai'i 32, 37, 897 P.2d 959, 964 (1995), Anduha submits that he "did not intelligently waive his rights where he was not informed of his right to maintain his plea of not guilty" and, after meeting with a probation officer and relating to her that the sex he had with the complainant was consensual, he "realize[d] that he did not make the correct decision in giving up his right to fight the above referenced charges because the accusation lodged against him is false[.]"

Even in the instance of a pre-sentence motion to withdraw a plea, a defendant does not have an absolute right to withdraw his or her guilty plea. State v. Topasna, 94 Hawai'i 444, 451, 16 P.3d 849, 856 (App. 2000). However, a court may grant a pre-sentence motion for the withdrawal of a guilty plea where "the defendant has presented a fair and just reason for his [or her] request and the state has not relied upon the plea to its substantial prejudice." Gomes, 79 Hawai'i at 36, 897 P.2d at 963 (citation omitted).

Although there is no assertion that the State has relied upon Anduha's plea to its substantial prejudice, Anduha has not established plausible and legitimate reasons for withdrawal of his plea. See also State v. Nicholson, 120 Hawai'i 480, 484, 210 P.3d 3, 7 (App. 2009). It is clear from the record that the Circuit Court engaged in an extensive, detailed, and comprehensive colloquy to ensure that Anduha knowingly,

intelligently, and voluntarily made his decision to accept the State's plea bargain and plead guilty. The Circuit Court's colloquy included, *inter alia*, that: Anduha's mind was clear before he decided to plead; he could read, write, and understand English; he understood the proceeding; his decision to plead was made by him alone; he was aware of the facts underlying the charges, he affirmatively admitted that he committed knowingly the illegal acts set forth in the charges; he was fully apprised of the consequences of his plea; he would be foregoing his right to plead not guilty; and he could not change his plea at a later date. Anduha presented no evidence of a change of circumstances or new information that would constitute a fair and just reason for withdrawing his plea. Consequently, the Circuit Court did not err when it found that Anduha knowingly, intelligently, and voluntarily pleaded guilty to his charges and did not abuse its discretion in denying his motion To withdraw plea.

For these reasons, the Circuit Court's September 7, 2010 Judgment of Conviction and Sentence is affirmed.

DATED: Honolulu, Hawai'i, October 31, 2011.

On the briefs:

Walter J. Rodby
for Defendant-Appellant

Chief Judge

Keith M. Kaneshiro
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Donn Fudo
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City and County of Honolulu
for Plaintiff-Appellee

Associate Judge

Associate Judge