

NO. 30347

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
PAUL ROGER MARINAS PATRON, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
WAILUKU DIVISION
(CASE NO. 2P108-1210)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, Leonard and Reifurth, JJ.)

Defendant-Appellant Paul Roger Marinas Patron ("Patron") appeals from the Notice of Entry of Judgment and/or Order ("Judgment"), filed on December 16, 2009, in the District Court of the Second Circuit, Wailuku Division ("District Court").¹ After a bench trial, the District Court convicted Patron of Assault in the Third Degree, in violation of Hawaii Revised Statutes § 707-712(1)(a) (1993),² and sentenced him to thirty days in jail.

On appeal, Patron argues that (1) the District Court plainly erred in allowing the case to proceed to trial, where his counsel was unprepared; and (2) he was denied effective assistance of counsel, where his counsel (a) failed to obtain discovery until the morning of trial and move for a trial continuance, and (b) failed to move to dismiss the charge after more than 180 days had elapsed from the date of the incident to the date of trial, in violation of Hawai'i Rules of Penal

¹ The Honorable Kelsey T. Kawano presided.

² HRS § 707-712(1)(a) provides: "A person commits the offense of assault in the third degree if the person . . . [i]ntentionally, knowingly, or recklessly causes bodily injury to another person[.]"

Procedure ("HRPP") Rule 48.

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 Patron's points of error as follows:

(1) The District Court did not plainly err by failing to continue trial sua sponte. After conferring with counsel for both parties, the District Court determined that it would proceed to trial on the instant matter, stating that it was the court's "understanding . . . that the parties are prepared to proceed today on . . . the assault case[.]"³ Defense counsel did not indicate that she was unprepared for trial. *Cf. State v. Torres*, 54 Haw. 502, 502-07, 510 P.2d 494, 495-98 (1973) ("[T]here is no per se rule regarding constitutionally adequate time in which . . . counsel may prepare.").

(2) Patron's assistance of counsel was not ineffective.

(a) Patron does not meet his burden of showing that his counsel's assistance was ineffective. Despite asserting that counsel failed to review the file until the morning of trial or obtain discovery, Patron does not demonstrate that "such errors or omissions resulted in either the withdrawal or substantial impairment of a potentially meritorious defense." *State v. Richie*, 88 Hawai'i 19, 39, 960 P.2d 1227, 1247 (1998) (quoting *State v. Fukusaku*, 85 Hawai'i 462, 480, 946 P.2d 32, 50 (1997)).

(b) Patron's argument that his counsel's incomplete preparation caused her to neglect to move to dismiss under HRPP Rule 48 is unavailing. Had counsel done so, the District Court would have properly concluded that, excluding various periods of time pursuant to HRPP Rule 48(c) and (d), no more than 180 days elapsed from the time he was arrested to the time of trial. Haw. R. Pen. Proc. 48; see *State v. Coyaso*, 73 Haw. 352, 356, 833 P.2d 66, 68 (1992) (stating that "the prosecutor, the court and the accused share responsibility for carrying out the speedy-trial requirements of Rule 48" (quoting *State v. English*, 68 Haw. 46, 53, 705 P.2d 12, 17 (1985))). Therefore, Patron was not deprived

³ The District Court continued trial on an additional charge against Patron.

of a potentially meritorious defense.

Therefore,

IT IS HEREBY ORDERED that the December 16, 2009 Notice of Entry of Judgment and/or Order filed in the District Court of the Second Circuit, Wailuku Division, is affirmed.

DATED: Honolulu, Hawai'i, January 23, 2013.

On the briefs:

Davelynn M. Tengan,
for Defendant-Appellant

Presiding Judge

Kristin Coccaro,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellee

Associate Judge

Associate Judge