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Intermediate Court of Appeals
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NO. CAAP-12-0000842

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
v.
SAMUEL K. KEA, III, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 11-1-0094)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Samuel K. Kea, III ("Kea") appeals from the Judgment of Conviction and Sentence, filed on September 18, 2012, in the Circuit Court of the First Circuit ("Circuit Court").^{1/} After a hearing on Kea's Motion to Withdraw Guilty Plea ("Motion"), the Circuit Court denied the motion and convicted Kea as a young adult defendant on the counts that he initially pled guilty to: two counts of Sexual Assault in the First Degree ("Sex Assault 1"), in violation of Hawaii Revised Statutes ("HRS") § 707-730(1)(b)^{2/} ("Counts 1 and 5"); two counts of Attempted Sex Assault 1, in violation of HRS §§ 705-500 & 707-730(1)(b) ("Counts 3 and 6"); and two counts of Sexual Assault

^{1/} The Honorable Randal K.O. Lee presided.

^{2/} HRS § 707-730(1)(b) provides that "[a] person commits the offense of sexual assault in the first degree if . . . [t]he person knowingly engages in sexual penetration with another person who is less than fourteen years old[.]" HAW. REV. STAT. § 707-730(1)(b) (Supp. 2012).

in the Third Degree, in violation of HRS § 707-732(1)(b)^{3/} ("Counts 4 and 7").

The court sentenced Kea as a youthful offender to an eight-year term of imprisonment on each of Counts 1, 3, 5, and 6; and a four-year term of imprisonment on each of Counts 4 and 7; with credit for time served. The sentences were to run concurrently with each other.

On appeal, Kea argues that the Circuit Court erred in denying his Motion, and he contests Conclusion of Law ("COL") 21 of the September 28, 2012 "Findings of Fact and Conclusions of Law Denying Defendant's Motion to Withdraw 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 by the parties, we resolve Kea's points of error as follows:

The Circuit Court did not abuse its discretion in denying Kea's Motion. The testimony of Kea's former counsel, which the Circuit Court found to be credible, provides substantial evidence in support of COL 21.^{4/} See *State v. Buch*, 83 Hawai'i 308, 321, 926 P.2d 599, 612 (1996) ("[A]n appellate court will not pass upon issues dependent upon the credibility of witnesses[.]" (quoting *Domingo v. State*, 76 Hawai'i 237, 242, 873 P.2d 775, 789 (1994)) (internal quotation marks omitted)). Therefore, COL 21 is not clearly erroneous and there is no "fair and just reason" to support Kea's withdrawal of his guilty plea. See *State v. Merino*, 81 Hawai'i 198, 223-24, 915 P.2d 672, 697-98 (1996).

Therefore,

IT IS HEREBY ORDERED that the Judgment of Conviction and Sentence, filed on September 18, 2012, in the Circuit Court

^{3/} HRS § 707-732(1)(b) provides that "[a] person commits the offense of sexual assault in the third degree if . . . [t]he person knowingly subjects to sexual contact another person who is less than fourteen years old or causes such a person to have sexual contact with the person[.]" HAW. REV. STAT. § 707-732(1)(b).

^{4/} COL 21 is a mislabeled finding of fact.

of the First Circuit, is affirmed.

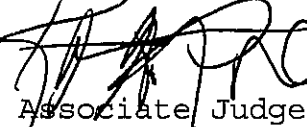
DATED: Honolulu, Hawai'i, October 10, 2013.

On the briefs:

Walter J. Rodby
for Defendant-Appellant.

Sonja P. McCullen,
Deputy Prosecuting Attorney,
City & County of Honolulu,
for Plaintiff-Appellee.


Presiding Judge


Associate Judge


Associate Judge