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NO. CAAP-13-0000150

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
CHRISTY A. OGAN, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CRIMINAL NOS. 06-1-0394(2) and 07-1-0753(2))

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Christy A. Ogan (**Ogan**) appeals from the February 19, 2013 "Order of Re-Sentencing, Revocation of Probation" and the February 15, 2013 "Mittmus, Warrant of Commitment to Jail" both entered in the Circuit Court of the Second Circuit¹ (**circuit court**).

On appeal, Ogan contends the circuit court reversibly erred because:

(1) insufficient evidence supported its finding that she inexcusably failed to comply with substantial terms and conditions of her probation;

(2) her right to allocution was violated when the circuit court imposed a ten-year prison term without directly and personally inquiring whether she wanted to address the court; and

¹ The Honorable Peter T. Cahill presided.

(3) the sentence imposed upon her was based on facts and evidence that had not been previously disclosed to her and are not found in the record.

Under the particular circumstances of this case, and in light of Plaintiff-Appellee State of Hawai'i's confessions of error, we conclude that there was insufficient evidence to support the circuit court's finding that Ogan inexcusably failed to comply with substantial terms and conditions of her probation. See State v. Quelnan, 70 Haw. 194, 767 P.2d 243 (1989).

Therefore,

IT IS HEREBY ORDERED that the February 19, 2013 "Order of Re-Sentencing, Revocation of Probation" and the February 15, 2013 "Mittimus, Warrant of Commitment to Jail" both entered in the Circuit Court of the Second Circuit are reversed. Ogan's other points on appeal are therefore moot.

DATED: Honolulu, Hawai'i, May 16, 2014.

On the briefs:

Benjamin E. Lowenthal
for Defendant-Appellant.

Richard K. Minatoya
Deputy Prosecuting Attorney
County of Maui
for Plaintiff-Appellee.


Chief Judge


Associate Judge


Associate Judge