NO. CAAP-15-0000548

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

STATE OF HAWAIʻI, Plaintiff-Appellee, v.
YOSHIRO SANNEY, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CRIMINAL NO. 10-1-1570)

SUMMARY DISPOSITION ORDER
(By: Nakamura, C.J., Foley and Fujise, JJ.)

Defendant-Appellant Yoshiro Sanney (**Sanney**) appeals from the June 29, 2015 "Order Denying [Sanney's] Motion to Reconsider Sentence" entered in the Circuit Court of the First Circuit[1] (**circuit court**). This post-judgment order denied Sanney's post-judgment Hawaiʻi Rules of Penal Procedure (**HRPP**) Rule 35 motion for reconsideration of sentence in the September 26, 2011 "Judgment of Conviction and Sentence" against Sanney for one count of sexual assault in the second degree in violation of HRS § 707-731(1)(b) (2014 Repl.) and one count of attempted sexual assault in the second degree in violation of HRS § 707-731(1)(b) and HRS § 705-500 (2014 Repl.).

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, as

[1] The Honorable Karen S.S. Ahn presided.

well as the relevant statutory and case law, we conclude Sanney's appeal is without merit.

On September 22, 2010, Plaintiff-Appellee State of Hawaiʻi (**State**) obtained an indictment against Sanney for one count of sexual assault in the second degree in violation of HRS § 707-731(1)(b) and one count of attempted sexual assault in the second degree in violation of HRS § 707-731(1)(b) and HRS § 705-500.

Sanney pleaded no contest to both counts.

On September 26, 2011, the circuit court entered a "Judgment of Conviction and Sentence" against Sanney and sentenced him to imprisonment for two concurrent terms of ten years.

On December 22, 2011, Sanney filed a "Motion To Reconsider Sentence" (**Motion for Reconsideration**) pursuant to HRPP Rule 35. On June 21, 2012, the circuit court entered an "Order Summarily Denying [Sanney's] Motion To Reconsider Sentence" (**2012 Order Denying Reconsideration**)

On July 24, 2012, Sanney filed a notice of appeal, in case no. CAAP-12-0000654, from the 2012 Order Denying Reconsideration.

On July 8, 2013, this court entered a summary disposition order in case no. CAAP-12-0000654 affirming the 2012 Order Denying Reconsideration. On September 19, 2013, Sanney applied to the Hawaiʻi Supreme Court for a writ of certiorari in case no. SCWC-12-0000654.

On August 12, 2014, the supreme court entered a memorandum opinion that vacated this court's summary disposition order and the circuit court's 2012 Order Denying Reconsideration and remanded this case to the circuit court with instructions to hold a hearing on Sanney's Motion for Reconsideration.

On January 20, 2015, a hearing on Sanney's Motion for Reconsideration was held, and at the conclusion of the hearing the circuit court denied the motion (**2015 Denial**). No written order was entered on this date.

On February 19, 2015, Sanney filed a notice of appeal from the 2015 Denial in case no. CAAP-15-0000086.

On March 30, 2015, the circuit court clerk filed the record on appeal for case no. CAAP-15-0000086, which did not contain a post-remand written order regarding the remand proceedings on Sanney's Motion for Reconsideration.

On June 24, 2015, this court entered an order dismissing case no. CAAP-15-0000086 for lack of appellate jurisdiction. Sanney filed a motion for reconsideration of the dismissal, which this court subsequently denied.

On June 29, 2015, the circuit court entered its written "Order Denying [Sanney's Motion For Reconsideration]" (**2015 Order Denying Reconsideration**).

On July 29, 2015, Sanney filed a notice of appeal from the 2015 Order Denying Reconsideration.

On appeal, Sanney contends the circuit court abused its discretion in sentencing him to an indeterminate term of 10 years of imprisonment because at the taking of his no contest plea the circuit court had given an inclination to sentence him to probation subject to up to 18 months of imprisonment. However, the circuit court explained:

> Now, Mr. Sanney, an inclination is not a promise. I did tell your lawyer that based on what he told me, that would be the way I would be looking at the case, but I need to be very up front with you.
>
> You know, there's going to be a presentence report [(**PSI**)] that's going to be generated if you decide to plead guilty today. And I don't know much about you, I'm looking at you now, I know what relatively little the lawyers have told me about the case and about your background, but it's that PSI that's very important, because that's going to be a more in-depth explanation of who you are, and your history, and your characteristics and the offense.
>
> In addition, the [circuit court] would always consider what happens at the sentencing hearing -- you know, the arguments; what, if anything, you have to say, and so on. So based on all of that, that's how the [circuit court] is going to make its decision on what an appropriate sentence would be. So I can tell you that's the inclination based on the representations I have. But as you can imagine, an inclination is only as good as the representations it is based on, so you need to understand that.

Sanney indicated that he understood and had no questions.

At the sentencing hearing and at the hearing on the Motion for Reconsideration on remand, Sanney denied "raping" the complainant although he admitted that he did not know the complainant except by sight before the incident. Sanney maintained that the complainant's boyfriend had insinuated that the boyfriend and the complainant were in an "open relationship," so Sanney began "making out" with the complainant. Sanney believed the "making out" was consensual. Sanney admitted that the complainant was passed out when he began having sex with her, but maintained that, "I was so messed up that I couldn't stop myself at that point." Sanney indicated that he understood that a female bystander was taking pictures of the incident and that, "to some extent I found it exciting that we were doing something we weren't supposed to be doing in public."

The State contends Sanney's allocution at sentencing and at the hearing on the Motion for Reconsideration indicated that Sanney did not fully recognize his conduct as rape. It also indicated that Sanney's substance abuse had reached a stage where he was unable to control his sexual conduct in public. The circuit court's previous knowledge was that Sanney was in a substance abuse program until April of 2010. The instant offense occurred five months later, when Sanney was abusing alcohol and smoking marijuana.

The circuit court did not abuse its discretion in denying Sanney's Motion for Reconsideration and in determining that a sentence of probation with 18 months of imprisonment was insufficient and that concurrent ten-year terms of imprisonment were warranted.

> A sentencing judge generally has broad discretion in imposing a sentence. The applicable standard of review for sentencing or resentencing matters is whether the court committed plain and manifest abuse of discretion in its decision. Factors which indicate a plain and manifest abuse of discretion are arbitrary or capricious action by the judge and a rigid refusal to consider the defendant's contentions. And, generally, to constitute an abuse it must appear that the court clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant.

State v. Solomon, 107 Hawaiʻi 117, 126, 111 P.3d 12, 21 (2005) (citations, internal quotation marks and brackets omitted; format altered).

Therefore,

IT IS HEREBY ORDERED that the June 29, 2015 "Order Denying Defendant's Motion to Reconsider Sentence" entered in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawaiʻi, June 28, 2016.

On the briefs:

Shawn A. Luiz
for Defendant-Appellant.

Brian R. Vincent
Deputy Prosecuting Attorney
City and County of Honolulu
for Plaintiff-Appellee.

Chief Judge

Associate Judge

Associate Judge