

NO. CAAP-16-0000198

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
v.
CLARENCE L. MONTALVO, III, Defendant-Appellant.

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CR. NO. 07-1-0686)

SUMMARY DISPOSITION ORDER

(By: Nakamura, Chief Judge, and Fujise and Reifurth, JJ.)

Defendant-Appellant Clarence L. Montalvo III (Montalvo) appeals from the post-judgment "Order Denying Defendant Clarence L. Montalvo III's Motion for Reduction of Sentence" (Order Denying Reduction of Sentence) that was filed on February 22, 2016, in the Circuit Court of the Second Circuit (Circuit Court).^{1/} We affirm.

I.

After a jury trial, Montalvo was found guilty of the included offense of third-degree negligent homicide. The Circuit

^{1/} In his notice of appeal, Montalvo also lists the Circuit Court's "Order Granting Motion to Execute Sentence" filed on February 22, 2016, and its "Order Denying Defendant Clarence L. Montalvo III's Motion for Second Stay of Execution of Sentencing Pending Appeal" filed on February 23, 2016, as post-judgment orders from which he appeals. However, Montalvo does not raise a challenge to these orders in his briefing on appeal, and we therefore do not address them in this appeal.

Court sentenced Montalvo to a term of probation subject to the special condition that he serve six months of imprisonment. Montalvo appealed from his "Judgment of Conviction and Probation Sentence" (Judgment). In that appeal, Montalvo challenged his conviction, but did not separately challenge his sentence. This court affirmed the Circuit Court's Judgment, State v. Montalvo, No. CAAP-12-0000027, 2015 WL 4067178 (Hawaii App. Jun. 30, 2015) (SDO), and the Hawaii Supreme Court denied Montalvo's application for writ of certiorari. State v. Montalvo, SCWC-12-0000027 (Hawaii Oct. 20, 2015).

After the supreme court denied certiorari, Montalvo filed a Motion for Reduction of Sentence in the Circuit Court. The Circuit Court held a hearing on Montalvo's motion, at which both Montalvo and Plaintiff-Appellee State of Hawaii (State) presented witnesses. The Circuit Court denied Montalvo's motion for reduction of sentence and filed its Order Denying Reduction of Sentence.^{2/}

II.

In this appeal, Montalvo contends that the Circuit Court abused its discretion in denying his motion for reduction of sentence. We disagree. The record does not support Montalvo's claim that the Circuit Court "refused to appropriately consider" the testimony presented at the hearing. Contrary to Montalvo's claim, the record shows that the Circuit Court fully considered the testimony presented at the hearing by both Montalvo and the State. After considering that testimony as well as relevant facts and circumstances of the case, the Circuit Court decided that a reduction of Montalvo's sentence was not warranted. The Circuit Court provided a detailed explanation of its reasons for denying Montalvo's motion for reduction of sentence, and we conclude that the Circuit Court clearly acted within its discretion in denying the motion. See State v. Tauiilili, 96 Hawaii 195, 198, 29 P.3d 914, 917 (2001)

^{2/} The Honorable Rhonda I.L. Loo presided.

(reviewing sentencing matters for plain and manifest abuse of discretion).

Based on the foregoing, we affirm the Circuit Court's Order Denying Reduction of Sentence.

DATED: Honolulu, Hawai'i, May 31, 2017.

On the briefs:

Shawn A. Luiz

for Defendant-Appellant.

Chief Judge

Richard K. Minatoya

Deputy Prosecuting Attorney

County of Maui

for Plaintiff-Appellee.

Associate Judge

Associate Judge