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Supreme Court
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IN THE SUPREME COURT OF THE STATE OF HAWAII

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STATE OF HAWAII,
Respondent/Plaintiff-Appellee,

vs.

THEO PEDRO,
Petitioner/Defendant-Appellant.

SCWC-19-0000439

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-19-0000439; FC NO. 2FFC-18-0000252(4))

JUNE 4, 2021

CONCURRING OPINION BY WILSON, J.

I join the Majority opinion but write to address the “fair and just” reason Pedro presented to continue the hearing on his motion to withdraw his plea based on the evidence of recantation he discovered after entering his plea, but before sentencing. The sworn testimony of his mother was that she

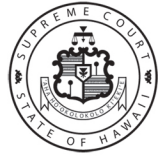
received information that the complaining witness recanted.¹ Specifically she received hearsay information that the complaining witness claimed, "it was not her doing" and that "it wasn't her . . . who made up the story [about the accusation]." Pedro was thus seeking the opportunity to exonerate himself based on this newly discovered evidence that directly supported his defense.

To continue the hearing to withdraw his plea based on his intention to investigate the newly discovered--albeit hearsay--evidence was an eminently "fair and just" request the court was compelled to grant under the liberal standard for withdrawal mandated by HRPP Rule 32(d). As noted in our Majority opinion, "the trial court . . . did not conduct the full 'fair and just reason' inquiry required by Jim." See State v. Jim, 58 Haw. 574, 576, 574 P.2d 521, 523 (1978). Respectfully, the trial court's denial of Pedro's request to

¹ Hawai'i Rules of Evidence ("HRE") do not apply in preliminary hearings in criminal cases. HRE Rule 1101(d)(3). Thus, hearsay is admissible at a hearing on a Hawai'i Rules of Penal Procedure ("HRPP") Rule 32(d) motion to withdraw a plea. See HRE Rule 1101(d)(3) ("The rules . . . do not apply in . . . [p]roceedings for extradition or rendition; preliminary hearings in criminal cases; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise.").

continue the hearing on the motion to withdraw his plea was an abuse of discretion.²

/s/ Michael D. Wilson



² The prosecutor opined at the hearing that the complaining witness did not recant. Without more, the opinion of the prosecutor did not render unreasonable Pedro's decision to investigate the hearsay evidence of recantation presented under oath at the hearing on the motion to withdraw plea.