



State v. Adora

2005 | Cited 0 times | Hawaii Intermediate Court of Appeals | October 28, 2005

NOT FOR PUBLICATION

SUMMARY DISPOSITION ORDER

Watanabe, Acting C.J., Lim and Foley, JJ.

In four consolidated appeals, Defendant-Appellant Jovie Adora (Adora) appeals from the four Judgments filed on October 29, 2003 in the Circuit Court of the First Circuit (circuit court).¹

S.Ct. 26243: In Cr. No. 01-1-2324, Adora pled guilty, pursuant to a plea agreement, to one count of Sexual Assault in the Third Degree, in violation of Hawaii Revised Statutes (HRS) § 707-732(1)(b) (Supp. 2004).² He was sentenced to serve a five-year term of imprisonment.

S.Ct. 26244: In Cr. No. 01-1-2446, Adora pled guilty, pursuant to a plea agreement, to one count of Sexual Assault in the First Degree, in violation of HRS § 707-730(1)(a) (Supp. 2004).³ He was sentenced to serve a twenty-year term of imprisonment.

S.Ct. 26245: In Cr. No. 02-1-0545 Adora pled guilty, pursuant to a plea agreement, to Sexual Assault in the Second Degree, in violation of HRS § 707-731 (Supp. 2001).⁴ He was sentenced to serve a ten-year term of imprisonment.

S.Ct. 26246: In Cr. No. 02-1-0810 Adora pled guilty, pursuant to a plea agreement, to one count of Sexual Assault in the First Degree, in violation of HRS § 707-730(1)(a) (Supp. 2004), and one count of Kidnapping as a class B felony, in violation of (HRS) § 707-720(1)(d) (1993).⁵ He was sentenced to serve twenty-year and ten-year terms of imprisonment, respectively.

On appeal, Adora contends the circuit court (1) abused its discretion in denying his Motions to Withdraw Guilty Plea because his pleas resulted from undue parental interference and thus were not voluntary; (2) abused its discretion in denying his Motions to Reconsider Findings of Fact, Conclusions of Law and Order Denying Motion to Withdraw Guilty Plea because Adora's account of police threats had some corroboration in the record, was plausible, and formed legitimate grounds for the withdrawals; and (3) plainly erred in failing to ascertain Adora's acquiescence that there were factual bases for his guilty pleas.

Upon careful review of the record and the briefs submitted by the parties and having given due



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consideration to the arguments advanced and the issues as raised by the parties, we hold:

- (1) The circuit court did not abuse its discretion by denying Adora's Motions to Withdraw Guilty Plea. *Foo v. State*, 106 Hawaii 102, 112, 102 P.3d 346, 356 (2004); *State v. Jim*, 58 Haw. 574, 574 P.2d 521 (1978); *State v. Topasna*, 99 Hawaii 444, 452, 16 P.3d 849, 857 (App. 2000).
- (2) The circuit court did not abuse its discretion by denying Adora's Motions to Reconsider Findings of Fact, Conclusions of Law and Order Denying Motion to Withdraw Guilty Plea. *State v. Jim*, 58 Haw. 574, 574 P.2d 521 (1978).
- (3) There were factual bases for Adora's guilty pleas. *State v. Merino*, 81 Hawaii 198, 217, 915 P.2d 672, 691 (1996).

Therefore,

IT IS HEREBY ORDERED that the Judgments filed on October 29, 2003 in Cr. Nos. 01-1-2324, 01-1-2446, 02-1-0545, and 02-1-0810 in the Circuit Court of the First Circuit are affirmed.

1. The Honorable Wilfred K. Watanabe presided at the hearings on Jovie Adora's (Adora) pleas and subsequent motions to withdraw his pleas. The Honorable Derrick H. M. Chan presided at the hearing on Adora's motions for reconsideration of the circuit court's orders denying his motions to withdraw his pleas and at Adora's sentencing.

2. Hawaii Revised Statutes (HRS) § 707-732(1)(b) (Supp. 2004) provides: "A person commits the offense of sexual assault in the third degree if: The 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[.]" (Enumeration omitted; format modified.) HRS § 707-700 (1993) defines "sexual contact" as "any touching of the sexual or other intimate parts of a person not married to the actor, or of the sexual or other intimate parts of the actor by the person, whether directly or through the clothing or other material intended to cover the sexual or other intimate parts." Sexual Assault in the Third Degree is a class C felony. HRS § 707-732(2) (Supp. 2004).

3. HRS § 707-730(1)(a) (Supp. 2004) provides: "A person commits the offense of sexual assault in the first degree if: The person knowingly subjects another person to an act of sexual penetration by strong compulsion[.]" (Enumeration omitted; format modified.) HRS § 707-700 (1993) defines "sexual penetration" as "vaginal intercourse, anal intercourse, fellatio, cunnilingus, anilingus, deviate sexual intercourse, or any intrusion of any part of a person's body or of any object into the genital or anal opening of another person's body; it occurs upon any penetration, however slight, but emission is not required. For purposes of this chapter, each act of sexual penetration shall constitute a separate offense." HRS § 707-700 defines "compulsion" in relevant part as "absence of consent." Sexual Assault in the First Degree is a class A felony. HRS § 707-730(2) (Supp. 2004).

4. HRS § 707-731 (Supp. 2001) provides: §707-731 Sexual assault in the second degree. (1) A person commits the offense of sexual assault in the second degree if: (a) The person knowingly subjects another person to an act of sexual penetration by



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compulsion; (b) The person knowingly subjects to sexual penetration another person who is mentally defective, mentally incapacitated, or physically helpless; (c) The person, while employed in a state correctional facility or while employed as a law enforcement officer as defined in section 710-1000(13), knowingly subjects to sexual penetration an imprisoned person, a person confined to a detention facility, or a person in custody; provided that paragraph (b) and this paragraph shall not be construed to prohibit practitioners licensed under chapter 453, 455, or 460, from performing any act within their respective practices; and further provided that this paragraph shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or exception to the warrant clause. (2) Sexual assault in the second degree is a class B felony.

5. HRS § 707-720(1)(d) (1993) provides: "A person commits the offense of kidnapping if the person intentionally or knowingly restrains another person with intent to: Inflict bodily injury upon that person or subject that person to a sexual offense[.]" (Enumeration omitted; format modified.) Kidnapping is a class A felony. HRS § 707-720(2) (1993). However, in "a prosecution for kidnapping, it is a defense which reduces the offense to a class B felony that the defendant voluntarily released the victim, alive and not suffering from serious or substantial bodily injury, in a safe place prior to trial." HRS § 707-720(3) (1993).

