Electronically Filed
Intermediate Court of Appeals
CAAP-20-0000175
14-JAN-2021
02:33 PM
Dkt. 117 RB

NO. CAAP-20-0000175

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI`I

STATE OF HAWAI`I, Plaintiff-Appellee, vs. BRANDON FETU LAFOGA, Defendant-Appellant, and RANIER INES, also known as Schizo, Defendant.	)	Case No. 1PC161001176 APPEAL FROM THE JUDGMENT OF CONVICTION AND SENTENCE, NOTICE OF ENTRY, entered on February 20, 2020 CIRCUIT COURT OF THE FIRST CIRCUIT THE HONORABLE PAUL B.K. WONG, Judge

REPLY BRIEF OF DEFENDANT-APPELLANT

WILLIAM K. LI #7941
ATTORNEY AT LAW
1188 Bishop Street, Suite 708
Honolulu, Hawai`i 96813
Telephone No: (808) 220-0139
Fax No.: (808) 521-1118
Email: williamlilaw@gmail.com

ATTORNEY FOR DEFENDANT-APPELLANT

NO. CAAP-20-0000175

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI`I

STATE OF HAWAI`I, Plaintiff-Appellee, vs. BRANDON FETU LAFOGA, Defendant-Appellant, and RANIER INES, also known as Schizo, Defendant.	)	Case No. 1PC161001176 APPEAL FROM THE JUDGMENT OF CONVICTION AND SENTENCE, NOTICE OF ENTRY, entered on February 20, 2020 CIRCUIT COURT OF THE FIRST CIRCUIT THE HONORABLE PAUL B.K. WONG, Judge

REPLY BRIEF OF DEFENDANT-APPELLANT

I. ARGUMENT

A. THE ANONYMOUS JURY ARGUMENT.

To clarify, Argument A of the Opening Brief relates to the trial court's order that the jurors were to be referred to by number and not by name. (Opening Brief at 18-22). Defendant-Appellant is not disputing the trial court's redaction of juror addresses and phone numbers from juror summons cards. Defendant-Appellant disputes the trial court's order that the jurors were to be referred to, on the record, by number and not by name. The term "partially anonymous jury" was intended to distinguish this case from the situation where the identity of jurors is not revealed to anyone, including the parties and/or counsel.

In all other respects, Argument A of the Opening Brief speaks for itself.

B. THE RULE 48 MOTION TO DISMISS.

Plaintiff-Appellee cites HRPP Rule 48(b)(3) to argue that the trial court was correct in resetting Defendant-Appellant's Rule 48 time to May 20, 2019, the date the trial court granted the withdrawal of Defendant-Appellant's guilty plea. (Answering Brief at 25). That particular Rule states:

> (b) By Court. Except in the case of traffic offenses that are not punishable by imprisonment, the court shall, on motion of the defendant, dismiss the charge, with or without prejudice in its discretion, if trial is not commenced within six months:
>
> * * * *
>
> (3) from the date of mistrial, order granting a new trial or remand, in cases where such events require a new trial.

Rule 48(b)(3), H.R.P.P. An order granting a withdrawal of a guilty plea is not equivalent to an order granting a new trial. A "new" trial presupposes that there was an initial trial. Defendant-Appellant's withdrawal of his guilty plea does not constitute a "trial" of any sort. As such, Rule 48(b)(3) is plainly inapplicable and the six-month period should be calculated from Defendant-Appellant's arrest on July 15, 2016, pursuant to HRPP Rule 48(b)(1), and not from the order granting the withdrawal of his guilty plea on May 20, 2019.

Plaintiff-Appellee posits a scenario where a defendant pleads guilty with one day left, subsequently withdraws that plea, and then requires the State to go to trial the very next day. Rule 48 does not contemplate this scenario. An entry of a guilty plea and a subsequent withdrawal of that plea should be treated as a continuance of trial and an excluded period. See Rule 48(b)(3) ("[t]he following periods shall be excluded in

computing the time for trial commencement ... periods that delay the commencement of trial and are caused by a continuance granted at the request or with the consent of the defendant or defendant's counsel"). In the scenario posited by Plaintiff-Appellee, the period of time from the defendant's guilty plea to the trial date set after the withdrawal of the guilty plea was granted would be a continuance of trial that the defendant triggered and subject to exclusion under Rule 48(b)(3). The trial court in that hypothetical case would not, and should not, expect the State to be prepared for trial the very next day after a withdrawal of plea is granted. In fact, resetting the 180-day period upon a defendant's withdrawal of his plea would frustrate the Rule 48 policy goals of speedy trials and efficient use of judicial resources and impermissibly chill a defendant's right to withdraw his or her plea.

This Court should conclude that Defendant-Appellant's arrest date of July 15, 2016, and not the date the trial court granted a withdrawal of his guilty plea (May 20, 2019) was the "triggering" event that started the 180-day period under Rule 48.

C. PLAINTIFF-APPELLEE'S RELIANCE ON H.R.S. § 705-502 TO ARGUE THAT THE TRIAL COURT HAD AUTHORITY TO IMPOSE AN EXTENDED SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE FOR A CONVICTION OF ATTEMPTED MURDER IN THE SECOND DEGREE IS MISPLACED BECAUSE THAT STATUTE WOULD TREAT ATTEMPTED MURDER AS AN ORDINARY CLASS A FELONY.

Plaintiff-Appellee cites H.R.S. § 705-502 to argue that the trial court had the authority to impose an extended sentence of life imprisonment without parole for Defendant-Appellant's conviction for Attempted Murder in the Second Degree. (Answering Brief at 35).

The Commentary to § 705-502 (1975 Special Supp.) states, in relevant part:

> For purposes of sentencing, the Code equates the criminal attempt with the most serious substantive offense attempted. Only in the case where the crime attempted is murder does the Code authorize a different sentence for the substantive offense than for the attempt. This is because §706-606 provides a special sentence for murder. Attempted murder is treated as an ordinary class A felony.

An extended sentence for an ordinary Class A felony is an indeterminate life term of imprisonment. H.R.S. § 706-661(2). Coupled with its Commentary, § 705-502 is insufficient proof of legislative intent to treat murder in the second degree and attempted murder in the second degree similarly for purposes of extended sentencing pursuant to H.R.S. § 706-661.

H.R.S. § 706-661(1) unambiguously provides for an extended sentence of life imprisonment without the possibility of parole for murder in the second degree only, not for attempted murder in the second degree.

II.

CONCLUSION

Defendant-Appellant BRANDON FETU LAFOGA relies upon the authorities and arguments contained in his Opening Brief as to any issues not discussed herein. Based upon the Opening Brief and the foregoing authorities and argument, Defendant requests that this Court grant him relief as outlined in his Opening Brief.

DATED: Honolulu, Hawaii, January 14, 2021.

Respectfully submitted,

WILLIAM K. LI

ATTORNEY AT LAW

BY: /s/ William K. Li
WILLIAM K. LI

ATTORNEY FOR DEFENDANT-APPELLANT
BRANDON FETU LAFOGA