

SUPREME COURT OF THE STATE OF HAWAI‘I

State v. Phua

135 Haw. 504 (2015) · No. SCWC-11-0000686 · Decided June 30, 2015

SUMMARY

The Supreme Court of Hawai‘i held that Han Kamakani Phua did not knowingly and intelligently waive his constitutional right to counsel at sentencing. The court concluded that the district court’s inquiry was insufficient, particularly given the circumstances bearing on Phua’s comprehension and the court’s failure to adequately address the risks and disadvantages of self-representation. Phua’s sentence was vacated and the case was remanded for a new sentencing hearing.

CASE DETAILS

COURT	Supreme Court of the State of Hawai‘i
WRITING FOR THE COURT	Richard W. Pollack; Mark E. Recktenwald, C.J.; Sabrina S. McKenna, J.; Richard W. Pollack, J.
JURISDICTION	Hawaii
DECIDED	June 30, 2015
DOCKET	SCWC-11-0000686
DISPOSITION	vacated
PROCEDURAL POSTURE	Phua petitioned for a writ of certiorari after the Intermediate Court of Appeals affirmed the district court's determination that he knowingly and intelligently waived counsel at sentencing and affirmed his sentence.
STANDARD OF REVIEW	Constitutional questions are reviewed under the right/wrong standard based on the appellate court's independent constitutional judgment.
PRECEDENTIAL VALUE	Published and precedential Hawai‘i Supreme Court opinion.
PARTIES	Han Kamakani Phua v. State of Hawai‘i

TOPICS

[right to counsel](#) [criminal procedure](#) [sentencing](#) [appellate procedure](#) [due process](#)

PRACTICE AREAS

[criminal procedure](#) [constitutional law](#) [appellate procedure](#) [sentencing](#)

QUESTIONS PRESENTED

1. Whether the district court established that Phua knowingly, intelligently, and voluntarily waived his constitutional right to counsel at sentencing.
2. Whether the district court violated Phua's right to pre-sentence allocation by failing to personally address him regarding his opportunity to speak before sentencing.

HOLDINGS

1. A sentencing proceeding is a critical stage of a criminal prosecution, and a waiver of counsel at sentencing is invalid when the record does not establish that the defendant knowingly, intelligently, and voluntarily waived the right after being adequately informed of the risks and disadvantages of self-representation.
2. Before accepting a waiver of counsel for sentencing, the trial court must inform the defendant of the potential punishment that may be imposed; failure to provide that information is sufficient ground to vacate the sentence.
3. The court did not decide the merits of Phua's pre-sentence-allocation claim because the invalid waiver of counsel independently required vacatur and resentencing.

KEY QUOTATIONS

“A “critical stage” of the prosecution includes “any stage where potential substantial prejudice to [a] defendant’s rights inheres,” and it has long been settled that this includes sentencing.” (512)

“It is unlikely that a record could reflect a knowing and intelligent waiver of counsel at sentencing without the defendant being apprised of such basic information as the maximum or range of punishment that may be imposed.” (515)

“The record in this case is critically deficient to support a finding that Phua’s waiver of his right to counsel was intelligently and knowingly made.” (517)

“The fact that the trial court did not warn Phua of the range of allowable punishment in this case is alone sufficient grounds for vacating the sentence.” (517)

FACTUAL BACKGROUND

Phua was convicted of harassment after a bench trial arising from a nonviolent quarrel with a person whom he believed was trespassing on property where he lived and worked. Before sentencing, his counsel advised the court that counsel would be unavailable on the scheduled date and presented alternatives under which Phua could seek a continuance or proceed without counsel. Phua appeared alone at sentencing, had limited education and English-language background, and told the court he was unaware that appointed counsel could be provided. The court conducted a brief colloquy, imposed the maximum five-day jail term permitted as a condition of probation, and did not advise Phua of the potential punishment or confirm that he had received and reviewed the presentence investigation report.

PROCEDURAL HISTORY

Phua was convicted after a bench trial in the District Court of the Third Circuit for harassment. He appeared without counsel at sentencing, where the district court found that he had waived his right to counsel and imposed probation, fees, and a five-day jail term with credit for one day. The ICA affirmed in a summary disposition order. The Hawai‘i Supreme Court granted review, vacated the ICA's judgment and the district court's judgment of conviction and sentence, and remanded for resentencing.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The ICA's judgment on appeal and the district court's judgment of conviction and sentence were vacated. The case was remanded to the District Court of the Third Circuit for a new sentencing proceeding.

CASES CITED

- State v. Rogan, 91 Hawai‘i 405, 984 P.2d 1231 (1999)
- State v. Mallan, 86 Hawai‘i 440, 950 P.2d 178 (1998)
- Reponse v. State, 57 Haw. 354, 556 P.2d 577 (1976)
- United States v. Ash, 413 U.S. 300 (1973)
- State v. Pitts, 131 Hawai‘i 537, 319 P.3d 456 (2014)
- State v. Masaniai, 63 Haw. 354, 628 P.2d 1018 (1981)
- D’Ambrosio v. State, 112 Hawai‘i 446, 146 P.3d 606 (2006)
- United States v. Salemo, 61 F.3d 214 (3d Cir. 1995)
- State v. Dickson, 4 Haw. App. 614, 673 P.2d 1036 (1983)
- State v. Gomez-Lobato, 130 Hawai‘i 465, 312 P.3d 897 (2013)
- United States v. Duarte-Higareda, 113 F.3d 1000 (9th Cir. 1997)
- Faretta v. California, 422 U.S. 806 (1975)
- State v. Hartman, 134 Vt. 64, 349 A.2d 223 (1975)
- State v. Young, 73 Haw. 217, 830 P.2d 512 (1992)
- State v. Ibuos, 75 Haw. 118, 857 P.2d 576 (1993)
- State v. Chow, 77 Hawai‘i 241, 883 P.2d 663 (App. 1994)
- Green v. United States, 365 U.S. 301 (1961)
- Iowa v. Tovar, 541 U.S. 77 (2004)
- Patterson v. Illinois, 487 U.S. 285 (1988)
- State v. Merino, 81 Haw. 198, 915 P.2d 672 (1996)
- State v. Luton, 83 Hawai‘i 443, 927 P.2d 844 (1996)
- State v. Liulama, 9 Haw. App. 447, 845 P.2d 1194 (1992)

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