

SUPREME COURT OF THE STATE OF HAWAI‘I

State v. Vaimili

135 Haw. 492 (2015) · No. SCWC-12-0000115 · Decided June 29, 2015

SUMMARY

The Hawai‘i Supreme Court reviewed Joseph Vaimili’s convictions for kidnapping, first-degree terroristic threatening, first-degree promoting prostitution, and carrying or using a firearm during a separate felony. The court addressed whether disjunctive charging rendered the amended complaint defective, whether counsel was ineffective for failing to challenge the charges, and whether the circuit court properly conducted the trial in Vaimili’s absence. The opinion was issued on June 29, 2015, on certiorari from the Intermediate Court of Appeals.

CASE DETAILS

COURT	Supreme Court of the State of Hawai‘i
WRITING FOR THE COURT	Sabrina S. McKenna, J.; Mark E. Recktenwald, C.J.; Paula A. Nakayama, J.; Richard W. Pollack, J.; Michael D. Wilson, J.
JURISDICTION	Hawaii
DECIDED	June 29, 2015
DOCKET	SCWC-12-0000115
DISPOSITION	affirmed
PROCEDURAL POSTURE	Vaimili sought certiorari review of a published Intermediate Court of Appeals decision affirming his convictions and sentence for kidnapping, first-degree terroristic threatening, first-degree promoting prostitution, and carrying or using a firearm in the commission of a separate felony.
STANDARD OF REVIEW	Sufficiency of the charges and interpretation of HRPP Rule 43 are reviewed de novo. Ineffective assistance of counsel is reviewed under the range-of-competence standard and requires specific errors or omissions plus possible impairment of a potentially meritorious defense. Constitutional questions are reviewed de novo under the right/wrong standard.
PRECEDENTIAL VALUE	Published and precedential
PARTIES	Joseph Vaimili v. State of Hawai‘i

TOPICS

criminal procedure

statutory interpretation

due process

right to counsel

PRACTICE AREAS

criminal procedure

constitutional law

statutory interpretation

ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether the amended complaint was defective because the State charged alternative acts and states of mind in the disjunctive.
2. Whether trial counsel was ineffective for failing to challenge the disjunctive charging language.
3. When trial commences for purposes of HRPP Rule 43(b)(1).
4. Whether proceeding with trial in Vaimili's absence violated HRPP Rule 43 or his constitutional right to be present.

HOLDINGS

1. A charge under a single statutory subsection may be worded disjunctively in the statutory language when the charged acts are reasonably related and the charge provides the defendant sufficient notice of the nature and cause of the accusation. Vaimili's amended complaint satisfied that standard and was not defective.
2. Trial counsel was not ineffective for failing to challenge the disjunctive charging language because the charges were legally sufficient and no potentially meritorious defense was impaired.
3. For purposes of HRPP Rule 43(b)(1), trial commences when prospective jurors are administered an oath before voir dire, rather than when the selected jury is sworn.
4. A trial court may proceed with trial when a defendant who was initially present voluntarily absents himself, but the court must balance the defendant's right to confront witnesses against the public interest before proceeding. The circuit court properly applied that balancing approach and did not violate Vaimili's right to be present.

KEY QUOTATIONS

“when charging a defendant under a single subsection of a statute, the charge may be worded disjunctively in the language of the statute as long as the acts charged are reasonably related so that the charge provides sufficient notice to the defendant.”

“for the purposes of HRPP Rule 43, trial “commences” when prospective jurors are administered an oath prior to voir dire, at any authorized location for court proceedings.”

“the narrow discretion given to the trial judge to proceed with the trial should be exercised only when the public interest clearly outweighs that of the absent defendant.”

FACTUAL BACKGROUND

Vaimili was charged with five sex-trafficking-related offenses arising from his conduct as a pimp for a woman who came to Hawai‘i to work as a prostitute. He appeared for jury selection and voir dire on June 21, 2010, but failed to appear when trial was scheduled to resume two days later. After issuing a bench warrant, forfeiting bail, and continuing the trial first five days and then twenty-one additional days, the circuit court found that Vaimili had voluntarily absented himself and proceeded with trial in his absence. The jury convicted him on all five counts, and he was later arrested in Texas and returned to Hawai‘i for sentencing.

PROCEDURAL HISTORY

The Circuit Court of the First Circuit proceeded with trial in Vaimili's absence after finding that he had voluntarily absented himself following jury selection and after continuing the matter for a total of twenty-six days. A jury convicted him on all five counts, and the circuit court imposed an aggregate sentence including consecutive terms. The ICA affirmed, rejecting challenges to the disjunctive charging language, ineffective-assistance claim, and trial in absentia. The Hawai‘i Supreme Court affirmed the ICA.

DISPOSITION

affirmed

CASES CITED

- State v. Codiamat, 131 Hawai‘i 220, 317 P.3d 664 (2013)
- State v. Wakisaka, 102 Hawai‘i 504, 78 P.3d 317 (2003)
- State v. Caraballo, 62 Haw. 309, 615 P.2d 91 (1980)
- State v. Okumura, 58 Haw. 425, 570 P.2d 848 (1977)
- State v. Batson, 73 Haw. 236, 831 P.2d 924 (1992)
- State v. Jendrusch, 58 Haw. 279, 567 P.2d 1242 (1977)
- State v. Nesmith, 127 Hawai‘i 48, 276 P.3d 617 (2012)
- State v. Sprattling, 99 Hawai‘i 312, 55 P.3d 276 (2002)
- State v. Quitog, 85 Hawai‘i 128, 938 P.2d 559 (1997)
- State v. Rauch, 94 Hawai‘i 315, 13 P.3d 324 (2000)
- Matias v. State, 73 Haw. 147, 828 P.2d 281 (1992)
- United States v. Miller, 463 F.2d 600 (1st Cir. 1972)
- United States v. Bradford, 237 F.3d 1306 (11th Cir. 2001)
- United States v. Benabe, 654 F.3d 753 (7th Cir. 2011)
- Cuoco v. United States, 208 F.3d 27 (2d Cir. 2000)
- United States v. Tortora, 464 F.2d 1202 (2d Cir. 1972)
- United States v. Benavides, 596 F.2d 137 (5th Cir. 1979)
- United States v. Beltran-Nunez, 716 F.2d 287 (5th Cir. 1983)
- Pointer v. Texas, 380 U.S. 400 (1965)
- Hopt v. Utah, 110 U.S. 574 (1884)

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