

NO. 22573

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee

vs.

CHRISTOPHER GRINDLING, Defendant-Appellant

APPEAL FROM THE SECOND CIRCUIT COURT
(CR. NO. 98-0325)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama,
Ramil, and Acoba, JJ.)

Defendant-Appellant Christopher Grindling (Grindling) timely appeals the Second Circuit Court's March 18, 1999 judgment of conviction and sentence of terroristic threatening in the first degree (Count Three) in violation of Hawaii Revised Statutes (HRS) § 707-716(1)(c) (1993). Grindling contends that (1) because his alleged threat to a police officer was "inherently conditional," and did not convey a gravity of purpose and imminent prospect of execution to the police officer, the evidence was insufficient to convict him of first degree terroristic threatening; and (2) the circuit court plainly erred in failing sua sponte to give a jury instruction "to avoid violating" the rule established in State v. Modica, 58 Hawaii 249, 567 P.2d 420 (1977). Specifically, Grindling asserts that convicting him of both a felony, first degree terroristic threatening, and a misdemeanor, resisting arrest (Count Four) in violation of HRS § 710-1026 (1993), for one alleged threat of a police officer violates the Modica rule and deprives him of due process and equal protection under the law.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we hold that: (1) Gridling's threat was unconditional and conveyed a gravity of purpose and imminent prospect of execution to a police officer, see State v. Chung, 75 Haw. 398, 416-17, 862 P.2d 1063, 1073 (1993); and (2) the circuit court did not plainly err because the Modica rule is inapplicable to this case, inasmuch as (a) Grindling's convictions of first degree terroristic threatening and resisting arrest were predicated upon separate and distinct conduct, and (b) the commission of resisting arrest did not invariably and necessarily constitute the commission of first degree terroristic threatening. State v. Friedman, 93 Hawai'i 63, 74-75, 996 P.2d 268, 279-80 (2000); Modica, 58 Haw. at 250, 567 P.2d at 421. Therefore,

IT IS HEREBY ORDERED that the circuit court's March 18, 1999 judgment of conviction and sentence of terroristic threatening in the first degree is affirmed.

DATED: Honolulu, Hawai'i, August 10, 2000.

On the briefs:

Andrew Von Sonn
for defendant-appellant

Simone C. Polak, Deputy
Prosecuting Attorney,
for plaintiff-appellee