

NO. 22932

IN THE SUPREME COURT OF THE STATE OF HAWAII

---

STATE OF HAWAII, Plaintiff-Appellee

vs.

STUART SOUZA, Defendant-Appellant

---

APPEAL FROM THE FIFTH CIRCUIT COURT  
(CR. NO. 98-0226)

SUMMARY DISPOSITION ORDER

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

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) inasmuch as the defendant-appellant Stuart Souza failed to establish that the amounts of methamphetamine at issue in the present matter were neither usable nor saleable and did not adduce substantial evidence with regard to whether the amounts at issue could not have produced any pharmacological action or physiological effect, the circuit court did not err in denying Souza's motion for dismissal before trial, at the close of the prosecution's case, and at the close of all the evidence, proffered on the ground, pursuant to Hawai'i Revised Statutes (HRS) § 702-236 (1993), that the amounts at issue in the present matter constituted de minimis infractions of HRS § 712-1243 (1993 & Supp. 1996), see State v. Balanza, 93 Hawai'i 279, 284-85, 1 P.3d 281, 286-87 (2000); State v. Viernes, 92 Hawai'i 130, 134-35, 988 P.2d 195, 199-200 (1999); and (2) inasmuch as (a) we

construe the circuit court's remarks at sentencing in the context of the whole proceeding, the remarks reflect no more than that the circuit court imposed a mandatory minimum term of imprisonment of two years, pursuant to HRS § 712-1243(3) (Supp. 1996), on the grounds that, inter alia, Souza's lack of remorse and persistence in abdicating any responsibility for the offenses of which he was convicted tended to negate Souza's proffered ground in mitigation (to wit, that he was likely to respond to rehabilitation), and, consequently, we do not read the circuit court's remark to signify that the court punished Souza for the nonexistent offense of "associating with drug dealers and users," rather than properly imposing its sentence for, as the court expressly stated, the offense of "promoting a dangerous drug in the third degree with the drug being crystal methamphetamine," and, moreover, (b) the record reflects that the statement isolated by Souza, even if arguably improper, was not the sole ground upon which the circuit court based its sentence, the circuit court did not abuse its discretion in sentencing Souza to a two-year mandatory minimum term of imprisonment, cf. State v. Vinge, 81 Hawai'i 309, 323-24, 916 P.2d 1210, 1224-25 (1996) (record revealed trial court's consideration of gang membership evidence "clearly served as aggravating factor in imposing sentence"); State v. Nunes, 72 Haw. 521, 525-26, 824 P.2d 837, 840 (1992) (record clearly established that trial court imposed sentence only on the basis of a nonstatutory sentencing factor, thereby punishing defendant solely for an uncharged crime). Therefore,

IT IS HEREBY ORDERED that the judgment of conviction and sentence from which the appeal is taken is affirmed.

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

On the briefs:

Linda C.R. Jameson (Deputy  
Public Defender), for the  
defendant-appellant,  
Stuart Souza

Dena M. Renti Cruz (Deputy  
Prosecuting Attorney), for  
the plaintiff-appellee,  
State of Hawai'i