

NO. 23188

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

GLENN TSUCHIYAMA, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
(CASE NO. 2:2/18/00)

SUMMARY DISPOSITION ORDER

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

Petitioner-appellant Glenn Tsuchiyama appeals from the judgment of the district court of the second circuit, the Honorable Yoshio Shigezawa presiding, convicting him of and sentencing him for driving after license suspended or revoked for driving under the influence of intoxicating liquor, in violation of Hawai'i Revised Statutes (HRS) § 291-4.5 (1993 & Supp. 1999).

Tsuchiyama contends that the district court erred because it: (1) failed to read orally the offense for which he was charged and therefore lacked jurisdiction to proceed with trial; (2) failed to conduct a colloquy regarding his right to a jury trial; (3) failed to inform him of his right to testify; (4) failed to strike the testimony of the arresting officer; and (5) considered his present conviction as a third offense for enhanced sentencing purposes.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments made and the issues raised by the parties, and inasmuch as the trial court failed to obtain a valid waiver of the right to a jury trial from Tsuchiyama and the prosecution conceded that the district court erred in this matter, we vacate

Tsuchiyama's judgment of conviction and sentence and remand his case to the district court for retrial.

THEREFORE, IT IS HEREBY ORDERED that the district court's judgment of conviction is vacated and that Tsuchiyama's case is remanded for retrial.

DATED: Honolulu, Hawai'i, July 17, 2001.

On the briefs:

Graham Daniel Mottola
of Lowenthal & August
for defendant-appellant

Mark K. Miyahira,
Deputy Prosecuting Attorney,
for plaintiff-appellee