S.B. NO. 842

JAN 26 2009

A BILL FOR AN ACT

RELATING TO APPEALS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 641-16, Hawaii Revised Statutes, is amended to read as follows:

"**§641-16 Judgment; no reversal when.** The supreme court, or the intermediate appellate court, as the case may be, may affirm, reverse, or modify the order, judgment, or sentence of the trial court in a criminal matter. It may enter such order, judgment, or sentence, or may remand the case to the trial court for the entry of the same or for such other or further proceedings, as in its opinion the facts and law warrant. It may correct any error appearing on the record.

In case of a conviction and sentence in a criminal case, if in its opinion the sentence is illegal or excessive it may correct the sentence to correspond with the verdict or finding or reduce the same, as the case may be. In case of a sentence to imprisonment for life not subject to parole, the court shall review the evidence to determine if the interests of justice require a new trial, whether the insufficiency of the evidence is alleged as error or not. Any order, judgment, or sentence

entered by the court may be enforced by it or remitted for enforcement by the trial court.

No order, judgment, or sentence shall be reversed or modified unless the court is of the opinion that error was committed which injuriously affected the substantial rights of the appellant. Nor shall there be a reversal in any criminal case for any defect of form merely in any indictment or information or for any matter held for the benefit of the appellant or for any finding depending on the credibility of witnesses or the weight of the evidence. Except as otherwise provided by the rules of court, there shall be no reversal for any alleged error in the admission or rejection of evidence [~~or the giving of or refusing to give an instruction to the jury~~] unless such alleged error was made the subject of an objection noted at the time it was committed or brought to the attention of the court in another appropriate manner.

Any other statute or rule to the contrary notwithstanding, there shall be no reversal for any alleged error in the giving or the refusal to give, or the modification of, an instruction to the jury, and neither the supreme court, the intermediate court of appeals, nor any other court shall have jurisdiction to consider such an alleged error, unless the alleged error was (1)

made the subject of an objection at the time it was committed or (2) brought to the attention of the court in another appropriate manner before the jury had retired to consider its verdict, except that a court may consider the alleged error if the alleged error seriously affected the fairness, integrity, or public reputation of the trial and more likely than not affected the outcome of the trial."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

INTRODUCED BY: _____

BY REQUEST

S.B. NO. 842

Report Title:
Appeals; Criminal Cases; Jury Instructions

Description:
Clarifies the limited instances where a court may reverse a conviction for any alleged error in the giving or the refusal to give, or the modification of, an instruction to the jury in a criminal matter.

SB 842

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO APPEALS.

PURPOSE: Clarifies the limited instances where a court may reverse a conviction for any alleged error in the giving or the refusal to give, or the modification of, an instruction to the jury in a criminal matter.

MEANS: Amend section 641-16, Hawaii Revised Statutes.

JUSTIFICATION: The general rule is that a party must object to an erroneous jury instruction in order to preserve the error for appeal. This is the case in federal court and in our sister states. In Hawaii, in a criminal case, a defendant need not object to an erroneous jury instruction for the issue to be preserved for appeal and for the appellate court to reverse a conviction any time the error is not harmless beyond a reasonable doubt. This rule, recently adopted by the Hawaii Supreme Court would apply even if the Defendant actually proposed the erroneous jury instruction. Although the Supreme Court's recent ruling appears to have been prohibited by an existing Hawaii statute, this bill makes the prohibition absolutely clear. This bill overrules this unreasonable and unprecedented standard by specifying that reversal on the basis of an erroneous jury instruction shall not occur and that an appellate court shall not have jurisdiction to consider an erroneous jury instruction unless that jury instruction was (1) made the subject of an objection at the time it was committed or (2) brought to the attention of the court in another appropriate manner before the jury had retired to consider its verdict, except that a court *may* consider the alleged error if the alleged error was plain and seriously

affected the fairness, integrity, or public reputation of the trial and more likely than not affected the outcome of the trial. This, in essence, conforms Hawaii law in this area to federal law and the law in our sister states. This also ensures that minor errors that did not prompt defense counsel to object, and which the trial court was not given a chance to study, consider, and correct (because not brought to its attention), do not form the basis for mandatory reversal.

Further, common sense also indicates that only those errors that more likely than not contributed to the conviction can be said to truly "affect substantial rights." Unobjected to errors that are *unlikely* to have contributed to the conviction should not lead to *automatic* reversal. While it is reasonable to make the trial judge the gatekeeper with regard to jury instructions, it is unreasonable (and contrary to statute and the common law) to allow unobjected to instructional errors that did not clearly affect the verdict to mandate reversal.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: Judiciary, County Prosecutors, Office of the Public Defender.

EFFECTIVE DATE: Upon approval.