

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I,) CR. NO. 95-298
)
Plaintiff-Appellee,)
) THIRD CIRCUIT COURT
vs.)
)
NEDWYNN KAPIKA,)
)
Defendant-Appellant.)
_____)

SUMMARY DISPOSITION ORDER

Defendant-appellant Nedwynn Kapika (Kapika) appeals from the circuit court's July 16, 1999 orders of resentencing/revocation of probation. Kapika contends that the circuit court reversibly erred in: (1) resentencing him without written notice of the grounds upon which extended term sentencing was sought, in contravention to Hawai'i Revised Statutes (HRS) § 706-664 (1993); (2) failing to make the requisite findings necessary to impose extended terms of imprisonment under HRS § 706-662 (1993); (3) abusing its discretion in sentencing Kapika to extended sentences in the absence of evidence that such sentences were necessary to ensure the protection of the public; and (4) sentencing Kapika pursuant to the allegedly biased and excessively prejudicial testimony of a probation officer which effectively violated his due process rights, and thus, resulted in the imposition of an illegal sentence.

_____ 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) the circuit court erred in resentencing Kapika without written notice of the grounds upon which extended term sentencing was sought, in contravention of Hawai'i Revised Statutes (HRS) § 706-664 (1993); and (2) the circuit court erred in failing to make the requisite findings necessary to impose extended terms of imprisonment under HRS § 706-662 (1993); see State v. Okumura, 78 Hawai'i 383, 413, 894 P.2d 80, 110 (1995). Therefore,

IT IS HEREBY ORDERED that the circuit court's July 16, 1999 orders of resentencing/revocation of probation are vacated, and this case is remanded for resentencing before a new sentencing judge.

DATED: Honolulu, Hawai'i, June 28, 2000.

On the briefs:

Jon N. Ikenaga,
Deputy Public Defender,
for defendant-appellant

Craig T. Masuda,
Deputy Prosecuting
Attorney, for
plaintiff-appellee

RONALD T.Y. MOON, Chief Justice

STEVEN H. LEVINSON, Associate Justice

PAULA A. NAKAYAMA, Associate Justice

MARIO R. RAMIL, Associate Justice

SIMEON R. ACOBA, JR., Associate Justice