

NO. 23667

IN THE SUPREME COURT OF THE STATE OF HAWAII

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STATE OF HAWAII, Plaintiff-Appellant,

vs.

JUNE N. HOEWAA, Defendant-Appellee.

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APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT,  
WAILUKU DIVISION  
(CASE NO. CT4: 7/26/00)

SUMMARY DISPOSITION ORDER

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

Plaintiff-appellant State of Hawaii appeals from a sentence imposed on defendant-appellee June Hoewaa by the district court of the second circuit, the Honorable John T. Vail presiding. The district court convicted Hoewaa of assault against a police officer, in violation of Hawaii Revised Statutes (HRS) § 707-712.5 (1993).<sup>1</sup> The district court sentenced

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<sup>1</sup> HRS § 707-712.5 states in relevant part:

**Assault against a police officer.**

(1) A person commits the offense of assault against a police officer if the person:

(a) Intentionally, knowingly, or recklessly causes bodily injury to a police officer who is engaged in the performance of duty; or

(b) Negligently causes, with a dangerous instrument, bodily injury to a police officer who is engaged in the performance of duty.

(2) Assault of a police officer is a misdemeanor. The court shall, at a minimum, sentence the person who has been convicted of this offense to imprisonment for no less than thirty days.

Hoewaa to probation for one year, subject to the special condition of 30 days jail, 28 days of which were suspended upon the performance of 60 hours of community service within 60 days. See State v. Sumera, 97 Hawai'i 430, 39 P.3d 557 (2002); see also State v. Batson, No. 23666, slip op. n. 1 (Hawai'i, Aug. 30, 2002).

On appeal, the prosecution asserts that Hoewaa's sentence is illegal. The prosecution argues that the language of section 707-712.5 is plain, unambiguous, and conclusive, and that the legislature intended this specifically prescribed sentence to be served. The prosecution therefore asserts that the trial court did not have the discretion to suspend any portion of the minimum thirty-day sentence. Hoewaa, on the other hand, argues that the language of section 707-712.5 does not limit the trial court's discretion to suspend the minimum sentence.

Upon carefully reviewing the record and briefs submitted by the parties, we hold that the district court did not err by suspending a portion of the minimum jail sentence because, pursuant to our decision in State v. Batson, No. 23666, slip op. (Hawai'i, Aug. 30, 2002), courts are not prohibited from

suspending part of the minimum jail sentence under section  
707-712.5.

IT IS HEREBY ORDERED that the second circuit's July 26,  
2000 judgment and sentence is affirmed.

DATED: Honolulu, Hawai'i, October 7, 2002.

On the briefs:

Benjamin M. Acob,  
Deputy Prosecuting Attorney,  
for plaintiff-appellant

Rose Anne Fletcher,  
Deputy Public Defender,  
for defendant-appellee