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NO. 24525

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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No. 24525  
STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

MONTE M. BOYD, Defendant-Appellant.  
(Cr. Nos. 99-1526 & 00-1-0113)

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No. 24526  
STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

MONTE M. BOYD, Defendant-Appellant.  
(Cr. Nos. 00-1-0113 & 99-1526)

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No. 24527  
STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

MONTE M. BOYD, Defendant-Appellant.  
(Cr. No. 00-1-1241)

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CR. NOS. 99-1526, 00-1-0113, & 00-1-1241)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Monte M. Boyd appeals from the first circuit court's<sup>1</sup> August 20, 2001 findings of fact, conclusions of law, and orders in Cr. Nos. 99-1526, 00-1-0113,

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<sup>1</sup> The Honorable Virginia Lea Crandall presided over the matters at issue on appeal.

and 00-1-1241, denying his motions to correct illegal sentence. On appeal, Boyd's sole contention is that the circuit court erred in sentencing him to extended terms of imprisonment and denying his motions to correct illegal sentence, based on Apprendi v. New Jersey, 530 U.S. 466 (2000).

Upon carefully reviewing the record and the briefs submitted and having given due consideration to the arguments advanced and the issues raised by the parties, we hold that the circuit court did not err in denying Boyd's motions to correct illegal sentence. In State v. Kaua, 102 Hawai'i 1, 12-13, 72 P.3d 473, 484-85 (2003), this court upheld the constitutionality of Hawai'i Revised Statutes (HRS) § 706-662 in light of the United States Supreme Court's decision in Apprendi. Therein, this court recognized that "the Apprendi Court held that findings that implicated 'elemental' facts requisite to imposing an enhanced sentence must be charged in the indictment, submitted to the jury, and proved by the prosecution beyond a reasonable doubt." 102 Hawai'i at 12, 72 P.3d at 484. This court explained, however, that the facts at issue in rendering an extended term sentencing determination under HRS §§ 706-662(1), (3), and (4) are not elemental facts, but rather they are "'extrinsic' to the elements of the offense[.]" Id. at 13, 72 P.3d at 485. In so doing, this court clarified

the fundamental distinction between the nature of the predicate facts described in HRS §§ 706-662(1), (3), and (4), on the one hand, and those described in HRS §§ 706-662(5) and (6), on the other. Specifically, the facts at issue in rendering an extended term sentencing

determination under HRS §§ 706-662(1), (3), and (4) implicate considerations completely "extrinsic" to the elements of the offense with which the defendant was charged and of which he was convicted; accordingly, they should be found by the sentencing judge in accordance with Huelsman and its progeny.

Id. at 12-13, 72 P.3d at 484-85 (internal footnote references and citations omitted) (emphases added).

In the present case, the circuit court found that Boyd was a "persistent offender" and "multiple offender" within the meaning of HRS §§ 706-662(1) and 4(a), respectively. Pursuant to Kaua, these findings "implicate considerations completely 'extrinsic' to the elements of the offense[s] with which the defendant was charged" and, therefore, "should be found by the sentencing judge[.]" Id. at 12-13, 72 P.3d at 484-85.

Accordingly, inasmuch as the circuit court's imposition of Boyd's extended term sentences complied with the procedural safeguards mandated by Kaua and Apprendi, the circuit court did not err in denying Boyd's motions to correct illegal sentence. Therefore,

IT IS HEREBY ORDERED that the circuit court's August 20, 2001 findings of fact, conclusions of law, and orders denying Boyd's motions to correct illegal sentence are affirmed.

DATED: Honolulu, Hawai'i, April 29, 2004.

On the briefs:

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