

NO. 24612

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

SALE SALE, aka JOHN SALE SALE, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 00-1-1808)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Acoba, JJ.,
and Circuit Judge Crandall, assigned by reason of vacancy)

In accordance with Hawai'i Rules of Appellate Procedure Rule 35 (2002), and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that the judgment and sentence of the first circuit court (the court),¹ filed on September 13, 2001, convicting Defendant-Appellant Sale Sale of habitually driving under the influence of intoxicating liquor, in violation of Hawai'i Revised Statutes (HRS) § 291-4.4(a)(1) (Supp. 2000), from which the appeal is taken, is vacated and the matter is remanded to the court with instructions to enter a judgment of conviction of the included offense of driving under the influence of intoxicating liquor, in violation of HRS § 291-4 (Supp. 2000),

¹ The Honorable Sandra A. Simms presided over the proceeding.

and to sentence Defendant accordingly. See State v. Shimabukuro, No. 23399, slip op. at 11-12 (Haw. Dec. 24, 2002).

IT IS FURTHER ORDERED that, in light of the circumstances and the record, the court's judgment of conviction and sentence as to the charge of driving after license suspended, revoked, or restricted for driving under the influence of intoxicating liquor, HRS § 291-4.5 (1993 & Supp. 2000), is affirmed.

DATED: Honolulu, Hawai'i, January 24, 2003.

On the briefs:

Craig T. Kimsel for
defendant-appellant.

Daniel H. Shimizu, Deputy
Prosecuting Attorney,
City & County of Honolulu,
for plaintiff-appellee.