

NO. 24950

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellee

vs.

ASIPELI POTAUAINI TAUVELI, Defendant-Appellant

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CR. NO. 01-1-0983)

SUMMARY DISPOSITION ORDER

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

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, 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),<sup>1</sup> filed on February 21, 2002, convicting Defendant-Appellant Asipeli Potauaine Tauveli of habitually driving under the influence of intoxicating liquor, in violation of Hawai'i Revised Statutes (HRS) § 291-4.4(a) (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),

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<sup>1</sup> The Honorable Michael A. Town presided over this matter.

and to sentence Defendant accordingly. See State v. Shimabukuro, No. 23391, 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 February 25, 2002 order denying Defendant's motion to amend Defendant's presentence report is affirmed.

DATED: Honolulu, Hawai'i, January 23, 2003.

On the briefs:

Earle A. Partington for  
defendant-appellant.

Alexa D.M. Fujise, Deputy  
Prosecuting Attorney,  
City & County of Honolulu,  
for plaintiff-appellee.