

NO. 25209

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

MICHAEL VICTOR MARTINEZ, JR., Defendant-Appellee

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 02-1-0635)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, and Duffy, JJ.;
and Acoba, J., Concurring Separately and Dissenting,
With Whom Nakayama, J., Joins)

By its July 12, 2002 notice, Plaintiff-Appellant State of Hawai'i (the prosecution) appeals from the June 21, 2002 "Order Granting Defendant's Motion to Dismiss Indictment Without Prejudice" and from the July 3, 2002 "Order of Summary Denial of State's Motion for Reconsideration of the Defendant's Motion to Dismiss Indictment" of the circuit court of the first circuit (the court)¹ dismissing the April 3, 2002 indictment charging Defendant-Appellee Michael Victor Martinez, Jr., also known as Michael Victor Martinez (Defendant) with Count I, habitually driving under the influence of intoxicating liquor or drugs, Hawai'i Revised Statutes (HRS) §§ 291-4.4(1)(1) and (a)(2) (Supp. 2000); Count II, consuming or possessing intoxicating liquor

¹ The Honorable Sandra A. Simms presided.

while operating a motor vehicle, HRS § 291-3.1(b) (1993); and Count III, driving on roadways laned for traffic, HRS § 286-102 (1993), without prejudice. On appeal, the prosecution argues, inter alia, that "the lower court abused its discretion when it dismissed the indictment because its legal basis for the dismissal was wrong as a matter of law." State v. Domingues, No. 25205, slip op. at 5 (Feb. 22, 2005), held that HRS § 291-4.4 (Supp. 1999) was substantially re-enacted in HRS § 291E-61 (Supp 2001) and is dispositive of Count I.² Accordingly,

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 first circuit court's Order dismissing the indictment without prejudice filed on June 21, 2002, and its Order denying the motion for reconsideration filed on July 3, 2002, from which the appeal is

² Defendant's arguments that "prosecution of [Defendant] under HRS § 291-4.4 is barred," "the indictment's defect did not vest the circuit court with subject matter jurisdiction . . . ," and "HRS § 291E-61 (Supp. 2001) is not a 'substantial re-enactment' of HRS § 291-4.4 (Supp. 1999) . . ." are disposed of and subsumed in the analyses set forth in the majority and dissenting opinions in Domingues. Defendant also argues that, under the rule of lenity, "to the extent that there is any ambiguity attendant to the legislature's repeal of HRS § 291-4.4, that ambiguity should be resolved in [his] favor." However, the repeal of HRS § 291-4.4 was not ambiguous.

taken, are vacated and the case remanded to the court in accordance with this order.³

DATED: Honolulu, Hawai'i, February 24, 2005.

On the briefs:

Loren J. Thomas, Deputy
Prosecuting Attorney,
City & County of Honolulu,
for plaintiff-appellant.

James S. Gifford, Deputy
Public Defender, for
defendant-appellee.

³ Apparently the court did not specifically rule as to Counts II and III, but dismissed the indictment in its entirety. Inasmuch as the motion to dismiss referred only to Count I, the court's June 21, 2002 and July 3, 2002 orders, insofar as they pertain to Counts II and III, are also vacated.