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NO. 25517

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellant

vs.

MUCHURO HIGA, JR., Defendant-Appellee

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CR. NO. 02-1-1829)

SUMMARY DISPOSITION ORDER

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

By its December 6, 2002 notice, Plaintiff-Appellant State of Hawai'i (the prosecution) appeals from the November 21, 2002 "Order Granting Motion to Dismiss Indictment" of the circuit court of the first circuit (the court)<sup>1</sup> dismissing the August 27, 2002 indictment charging Defendant-Appellee Muchuro Higa, Jr. (Defendant) with habitually driving under the influence of intoxicating liquor or drugs, Hawai'i Revised Statutes (HRS) §§ 291-4.4(a)(1) and (a)(2) (Supp. 2000), without prejudice. On appeal the prosecution argues, inter alia, that "the circuit 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-

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<sup>1</sup> The Honorable Sandra A. Simms presided.

enacted in HRS § 291E-61 and is dispositive of this appeal.<sup>2</sup>

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 court's order filed on November 21, 2002, from which the appeal is taken, is vacated and the case remanded to the court for disposition in accordance with this order.

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

On the briefs:

Bryan K. Sano, Deputy  
Prosecuting Attorney,  
City & County of  
Honolulu, for  
plaintiff-appellant.

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

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<sup>2</sup> 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.