

NO. 25542

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellant,

vs.

DARRELL K. NAKANO, Defendant-Appellee.

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 02-1-1545)

SUMMARY DISPOSITION ORDER

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

Plaintiff-appellant State of Hawai'i [hereinafter, the prosecution] appeals from the judgment, guilty conviction and probation sentence, notice of entry, and mittimus of the First Circuit Court, the Honorable Marie N. Milks presiding, entered on November 20, 2002. Specifically, the prosecution argues that the circuit court erred in sentencing defendant-appellee Darrell K. Nakano to probation pursuant to Hawai'i Revised Statutes (HRS) § 706-622.5 (Supp. 2002), rather than granting the prosecution's motion to sentence Nakano to a mandatory minimum term of imprisonment as a repeat offender pursuant to HRS § 706-606.5 (1993 & Supp. 2002).

Upon carefully reviewing the record and the briefs submitted by the parties, and having given due consideration to the arguments advocated and the issues raised, we conclude that this court's decisions in State v. Smith, 103 Hawai'i 228, 81 P.3d 408 (2003), and State v. Walker, 106 Hawai'i 1, 100 P.3d 595

(2004), are entirely dispositive of the present matter. Smith, 103 Hawai'i at 234, 81 P.3d at 414 (holding that "in all cases in which HRS § 706-606.5 is applicable, including those in which a defendant would otherwise be eligible for probation under HRS § 706-622.5, the circuit courts must sentence defendants pursuant to the provisions of HRS § 706-606.5"); Walker, 106 Hawai'i at 9, 100 P.3d at 603 (holding that, although the July 1, 2004 amendments to HRS § 706-622.5 give the lower courts discretion to sentence first-time non-violent drug offenders to probation, these amendments did not apply retroactively). Thus, given the "plain and unambiguous" rulings of this court in Smith and Walker, the circuit court erred in sentencing Nakano pursuant to HRS § 706-622.5 instead of applying HRS § 706-606.5. Therefore,

IT IS HEREBY ORDERED that the portion of the circuit court's judgment sentencing Nakano pursuant to HRS § 706-622.5 is vacated, and we remand this matter to the circuit court for resentencing in accordance with the provisions of HRS § 706-606.5.

DATED: Honolulu, Hawai'i, January 19, 2005.

On the briefs:

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for plaintiff-appellant
State of Hawai'i

Phyllis J. Hironaka,
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for defendant-appellee
Darrell K. Nakano