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NO. 25601

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellant

vs.

JUSTIN K.H. AETO, Defendant-Appellee

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CR. NO. 02-1-1107)

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 January 23, 2003 notice, Plaintiff-Appellant State of Hawai'i (the prosecution) appeals from the December 31, 2002 "Findings of Fact, Conclusions of Law and Order Granting Defendant's Motion to Dismiss Indictment" (Order) of the circuit court of the first circuit<sup>1</sup> (the court) dismissing the June 4, 2002 indictment charging Defendant-Appellee Justin K.H. Aeto with Count I, habitually driving under the influence, Hawai'i Revised Statutes (HRS) § 291-4.4(a)(1) (Supp. 2000) and/or HRS § 291-4.4(a)(2) (Supp. 2000); Count II, driving without license, HRS § 286-102 (Sup. 1999); Count III, driving without no-fault insurance, HRS § 431:10C-104 (Supp. 1997); and Count IV, driving on roadways laned for traffic, HRS § 291C-49 (1993), without prejudice. On appeal, the prosecution argues, inter alia, that

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

Defendant was properly charged inasmuch as HRS § 291E-61 (Supp. 2001), the newer statute, was a substantial re-enactment of HRS § 291-4.4, the repealed statute under which Defendant was charged. 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 and is dispositive of Count I.<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 December 21, 2002, from which the appeal is taken, with respect to Count I is vacated, as well as with respect to Counts II, III, and IV, and the case remanded to the court.<sup>3</sup>

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

On the briefs:

Mark Yuen, Deputy Prosecuting  
Attorney, City & County

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<sup>2</sup> Defendant's arguments that "prosecution is barred by the general rule prohibiting post-repeal prosecutions," "prosecution is barred by the plain meaning of Act 189's repeal of HRS § 291-4.4," and "prosecution is barred because HRS § 291E-61 is not a 'substantial re-enactment' of HRS § 291-4.4" are addressed or subsumed in the analyses of the majority and dissenting opinions in Domingues. Defendant also argues that "[u]nder the 'rule of lenity,' an ambiguity, if any, attendant to the Legislature's repeal of HRS § 291-4.4 should be resolved in [Defendant's] favor." [AB at 20.] However, the repeal of HRS § 291-4.4 was not ambiguous.

<sup>3</sup> None of the parties present argument as to Counts II, III, and IV. Apparently the court did not specifically rule as to these counts, but dismissed the indictment in its entirety. Inasmuch as the motion to dismiss concerned Count I, the court's order is also vacated insofar as it pertains to Counts II, III, and IV.

of Honolulu, for plaintiff-appellant.

Deborah L. Kim, Deputy Public Defender (Cindy A.L. Goodness assisting), for defendant-appellee.