

*** NOT FOR PUBLICATION ***

NO. 25818

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

ANGELINE AVILLA, Defendant-Appellant

APPEAL FROM THE THIRD CIRCUIT COURT
(CR. NO. 98-0144)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Angeline Avilla (Avilla) appeals from the April 11, 2003 order of the circuit court of the third circuit, the Honorable Riki May Amano presiding, revoking Avilla's probation and resentencing her to a ten-year prison term to be served consecutive to her ten-year sentences in Cr. No. 98-0028¹ and Cr. No. 99-0162.² On appeal, Avilla challenges her sentence, arguing that (1) the circuit court abused its discretion in sentencing her to consecutive prison terms, and (2) a thirty-year prison term constituted cruel and unusual punishment.

¹ On August 10, 2000, Avilla pled guilty to one count of burglary in the first degree. Avilla was sentenced to five years' probation and a one-year prison term, with credit given for time served. Upon violating the terms and conditions of her probation, Avilla was resentenced to not more than ten years' imprisonment, with credit given for time served, to be served consecutive to her ten-year sentences in Cr. No. 98-0144 and Cr. No. 99-0162. This case, however, was never consolidated with the other cases.

² On August 10, 2000, Avilla pled guilty to one count of burglary in the first degree. Avilla was sentenced to five years' probation and a one-year prison term, with credit given for time served. Upon violating the terms and conditions of her probation, Avilla was resentenced to not more than ten years' imprisonment, with credit given for time served, to be served consecutive to her ten-year sentences in Cr. No. 98-0028 and Cr. No. 98-0144. This case, however, was never consolidated with the other cases.

*** NOT FOR PUBLICATION ***

Upon carefully reviewing the record and the briefs submitted and having given due consideration to the issues raised and arguments advanced, we hold that: (1) the circuit court did not abuse its discretion in resentencing Avilla to consecutive prison terms, inasmuch as the imposition of consecutive sentences fell within statutory authority and was not absurd or unjust in light of (a) the record, (b) Avilla's commission of multiple burglaries, and (c) the number of victims, see HRS §§ 706-668.5 and 706-606; State v. Savitz, 97 Hawai'i 440, 39 P.3d 567 (2002); State v. Gaylord, 78 Hawai'i 127, 890 P.2d 1167 (1995); State v. Kumukau, 71 Haw. 218, 787 P.2d 682 (1990); and (2) the circuit court's imposition of a thirty year sentence did not constitute cruel and unusual punishment, in violation of article I, section 12 of the Hawai'i Constitution and the eighth amendment to the United States Constitution, inasmuch as (a) the nature of Avilla's offense warranted the imposition of the penalty she received, (b) Avilla's sentence was not disproportionate to sentences for more serious crimes, (c) statutory schemes from other jurisdictions reveal significantly lengthier sentences for convictions of burglary in the first degree, (d) Avilla's sentence fell within the prescribed statutory provisions, see HRS §§ 706-660 and 706-668.5, (e) Avilla's sentence does not "shock the conscience" of reasonable persons, and (f) Avilla's sentence does not outrage the moral sense of the community, see State v. Jenkins, 93 Hawai'i 87, 997 P.2d 13 (2000); State v. Kumukau, 71

*** NOT FOR PUBLICATION ***

Haw. 218, 787 P.2d 682 (1990); State v. Freitas, 61 Haw. 262, 602 P.2d 914 (1979). Therefore,

IT IS HEREBY ORDERED that the circuit court's April 11, 2003 order of resentencing of revocation of probation, from which the appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, March 3, 2004.

On the briefs:

Harry Eliason
for defendant-appellant
Angeline Avilla

Darien W.L.C. Nagata,
Deputy Prosecuting Attorney,
for plaintiff-appellee
State of Hawai'i