

***** NOT FOR PUBLICATION *****

NO. 25905

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellant,

vs.

KANIELA K. DAVIS, Defendant-Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 02-1-2345)

SUMMARY DISPOSITION ORDER

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

The plaintiff-appellant State of Hawai'i [hereinafter, the "prosecution"] appeals from the judgment of the first circuit court, the Honorable Karl K. Sakamoto presiding, filed on June 3, 2003, convicting the defendant-appellee Kaniela K. Davis of and sentencing him for the offenses of promoting a dangerous drug in the third degree, in violation of Hawai'i Revised Statutes (HRS) § 712-1243 (1993 & Supp. 2002) (Count I), unlawful use of drug paraphernalia, in violation of HRS § 329-43.5(a) (1993) (Count II), criminal property damage in the third degree, in violation of HRS § 708-822(1)(b) (Supp. 2001) (Count III), and resisting arrest, in violation of HRS § 710-1026(1)(a) (1993 & Supp. 2001) (Count IV). The prosecution's sole contention on appeal is that the circuit court erred in sentencing Davis pursuant to HRS § 706-622.5 (Supp. 2002) and that the circuit court should have sentenced him in accordance with HRS § 706-606.5 (1993 & Supp. 2001).

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Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we resolve the prosecution's appeal as follows:

This court's decision in State v. Smith, 103 Hawai'i 228, 81 P.3d 408 (2003), is entirely dispositive of the present matter. Id. 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"). Thus, given the "plain and unambiguous" ruling of this court in Smith, the circuit court erred in sentencing Davis pursuant to HRS § 706-622.5 instead of applying HRS § 706-606.5. Therefore,

IT IS HEREBY ORDERED that the portion circuit court's judgment sentencing Davis 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, March 1, 2004.

On the briefs:

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Mary Ann Barnard,
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