

NO. 24464

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
BENNY K. BENZON, Defendant-Appellant

APPEAL FROM THE FIFTH CIRCUIT COURT
(CR. NOS. 87-0222 & 87-0223)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Acting C.J., Lim and Foley, JJ.)

Defendant-Appellant Benny K. Benzon (Benzon) appeals from the Findings of Fact; Conclusions of Law; Order Denying HRPP Rule 35 Motion for Correction of Illegal Sentence (Order) filed July 19, 2001, in the Circuit Court of the Fifth Circuit (circuit court).¹

Benzon was charged with, convicted of, and sentenced on six counts of Sexual Assault in the First Degree, in violation of Hawaii Revised Statutes (HRS) § 707-730(1)(a). The circuit court ordered Benzon's terms of imprisonment to be served consecutively.

On appeal, Benzon contends: (1) his "enhanced sentence" must be vacated because it was in violation of Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348 (2000); (2) the circuit court abused its discretion in ordering consecutive

¹The Honorable George M. Masuoka presided.

sentences, citing State v. Cornelio, 84 Hawai'i 476, 935 P.2d 1021 (1997), as authority; and (3) the circuit court disregarded "the statutory requirement in sentencing" as set forth in HRS § 706-606 (1993).² Upon careful review of the record of the proceedings, we conclude Benzon's contentions are without merit.

(1) Benzon did not receive an enhanced or extended term of imprisonment addressed in Apprendi v. New Jersey, *supra*, but consecutive terms of imprisonment pursuant to HRS § 706-668.5 (1993).³

²HRS § 706-606 (1993) reads as follows:

§706-606 Factors to be considered in imposing a sentence.

The court, in determining the particular sentence to be imposed, shall consider:

- (1) The nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) The need for the sentence imposed:
 - (a) To reflect the seriousness of the offense, to promote respect for law, and to provide just punishment for the offense;
 - (b) To afford adequate deterrence to criminal conduct;
 - (c) To protect the public from further crimes of the defendant; and
 - (d) To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) The kinds of sentences available; and
- (4) The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

³HRS § 706-668.5 (1993) reads as follows:

§706-668.5 Multiple sentence of imprisonment. (1) If multiple terms of imprisonment are imposed on a defendant at the same time, or if a term of imprisonment is imposed on a defendant who is already subject to an unexpired term of imprisonment, the terms may run concurrently or consecutively. Multiple terms of imprisonment imposed at the same time run concurrently unless the court orders or the statute mandates that the terms run

(2) Benzon was ordered to serve consecutive indeterminate sentences, not consecutive mandatory sentences addressed in State v. Cornelio, supra; and

(3) Benzon fails to include the transcript of his sentencing hearing; therefore we cannot consider his contention that the circuit court failed to consider the factors set forth in HRS § 706-606. State v. Hoang, 93 Hawai'i 333, 336, 3 P.3d 499, 502 (2000).

Accordingly, the Findings of Fact; Conclusions of Law; Order Denying HRPP Rule 35 Motion for Correction of Illegal Sentence filed July 19, 2001 in the Circuit Court of the Fifth Circuit is affirmed.

DATED: Honolulu, Hawai'i, February 21, 2003.

On the briefs:

Benny K. Benzon,
pro se defendant-appellant.

Acting Chief Judge

Tracy Murakami,
Deputy Prosecuting Attorney,
County of Kaua'i,
for plaintiff-appellee.

Associate Judge

Associate Judge

consecutively. Multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms run concurrently.

(2) The court, in determining whether the terms imposed are to be ordered to run concurrently or consecutively, shall consider the factors set forth in section 706-606.