

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 27735

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
LLEWELLYN PATRICK LAYSA, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 04-1-2596)

SUMMARY DISPOSITION ORDER

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

This is a drug case, which originated the night of December 18, 2004 with an anonymous telephone call to the police about a man waving a gun around in Ala Wai Community Park, and was made when the police recovered an ice pipe with residue on the ground where Llewellyn Patrick Laysa (Defendant or Laysa) had discarded it during their investigation into the weapons violation.

Defendant appeals the November 30, 2005 judgment of the Circuit Court of the First Circuit (circuit court)¹ that convicted him, upon a jury's verdicts, of the charges of promoting a dangerous drug in the third degree (Count I), Hawaii Revised Statutes (HRS) § 712-1243 (Supp. 2005), and unlawful possession of drug paraphernalia (Count II), HRS § 329-43.5(a) (1993). In each count, the circuit court sentenced Defendant to a concurrent but extended indeterminate term of imprisonment of ten years as a "persistent offender" under HRS § 706-662(1)

¹ The Honorable Michael D. Wilson presided.

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(Supp. 2005), and as a "multiple offender" under HRS § 706-662(4) (Supp. 2005).²

Defendant stakes out a single point of error in his appeal: "The circuit court erred when it sentenced Laysa to an extended term of imprisonment under HRS § 706-662(1) and (4) because the jury did not decide the finding that an extended term sentence was necessary for the protection of the public."³ Opening Brief at 4. Defendant advances a single argument in

² Hawaii Revised Statutes (HRS) §§ 706-662(1) and -662(4) (Supp. 2005) provide:

A convicted defendant may be subject to an extended term of imprisonment under section 706-661, if the convicted defendant satisfies one or more of the following criteria:

- (1) The defendant is a persistent offender whose imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless the defendant has previously been convicted of two felonies committed at different times when the defendant was eighteen years of age or older.
.....
- (4) The defendant is a multiple offender whose criminal actions were so extensive that a sentence of imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless:
 - (a) The defendant is being sentenced for two or more felonies or is already under sentence of imprisonment for felony; or
 - (b) The maximum terms of imprisonment authorized for each of the defendant's crimes, if made to run consecutively, would equal or exceed in length the maximum of the extended term imposed or would equal or exceed forty years if the extended term imposed is for a class A felony.

The two charges in this case are class C felonies. HRS § 712-1243(2) (Supp. 2005); HRS § 329-43.5(a) (1993). HRS § 706-661(4) (Supp. 2005) provides that each carries an extended indeterminate term of imprisonment of ten years.

³ See HRS §§ 706-662(1) and -662(4).

support of his point:

Laysa respectfully submits that for the reasons discussed below, Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), and Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004), compel [the Hawai'i Supreme Court] to strike down Hawai'i's extended term sentencing scheme and to overrule State v. White, 110 Hawai'i 79, 129 P.3d 1107 (2006), State v. Rivera, 106 Hawai'i 146, 102 P.3d 1044 (2004), State v. Kaua, 102 Hawai'i 1, 72 P.3d 473 (2003), and State v. Mauqaoteqa, 107 Hawai'i 399, 114 P.3d 905 (2005).

Opening Brief at 8.

Defendant filed his notice of appeal in the circuit court on January 27, 2006. He filed his opening brief in the supreme court on June 6, 2006, and the State answered on August 8, 2006. On August 14, 2006, Defendant informed the supreme court that no reply brief would be forthcoming. Thereupon, on August 31, 2006, the supreme court assigned Defendant's appeal to us. Obviously, we cannot presume to accommodate Defendant's request to overrule the above-cited supreme court cases.

Therefore, after a meticulous review of the record and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties,

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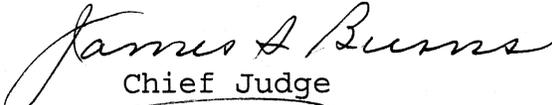
IT IS HEREBY ORDERED that the circuit court's November 30, 2005 judgment is affirmed.

DATED: Honolulu, Hawai'i, November 2, 2006.

On the briefs:

James S. Tabe,
Deputy Public Defender,
for Defendant-Appellant.

Daniel H. Shimizu,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.


Chief Judge


Associate Judge


Associate Judge