

NO. 27825

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

RICHARD BLAISDELL, Petitioner-Appellant,  
STATE OF HAWAII, Respondent-Appellee

K. HANAKADO  
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APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(SPP No. 05-1-0055 (Cr. No. 92-2513))

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Richard Blaisdell (Blaisdell) appeals the Findings of Fact, Conclusions of Law, and Order Denying Petition to Correct Illegal Sentence, Filed July 18, 2005, Without a Hearing, entered by the Circuit Court of the First Circuit (the circuit court), the Honorable Virginia Lea Crandall presiding, on February 27, 2006. We affirm.

BACKGROUND

On August 28, 1990, Blaisdell was indicted in Cr. No. 90-1541 and charged with committing twenty-six counts of varying degrees of Sexual Assault and Attempted Sexual Assault against seven minor girls, who were under fourteen years of age. On August 4, 1992, the circuit court entered an order dismissing without prejudice the counts against Blaisdell due to a violation of the speedy-trial requirements imposed by Hawai'i Rules of Penal Procedure (HRPP) Rule 48.

On August 20, 1992, Blaisdell was reindicted in Cr. No. 92-2513 for twenty-three counts of various degrees of Sexual Assault or Attempted Sexual Assault and one count of Terroristic Threatening in the First Degree. On December 6, 1993, the circuit court granted Blaisdell's Motion for Severance of Counts and Separate Trials.

On December 14, 1993, following the first jury trial, Blaisdell was found guilty of two counts of Sexual Assault in the First Degree and six counts of Sexual Assault in the Third Degree. Respondent-Appellee State of Hawai'i (the State) moved for an extended prison term, and on March 10, 1994, the circuit court granted the motion as to the six counts, extending Blaisdell's five-year prison terms to ten years, to run concurrently. The circuit court denied the motion as to the other two counts and sentenced Blaisdell to concurrent terms of twenty years' imprisonment on those counts. The ten-year terms of imprisonment were ordered to run consecutively to the concurrent twenty-year terms.

On November 10, 1994, following the second jury trial, Blaisdell was found guilty on all counts. The State moved for extended prison terms, and on April 29, 2002, pursuant to Hawaii Revised Statutes (HRS) §§ 706-661 and 706-662(4)(a), the circuit court granted the motion. The circuit court sentenced Blaisdell to an extended life-imprisonment term for three counts of Sexual

Assault in the First Degree and an extended prison term of ten years for the remaining six counts. The circuit court also ordered that the sentences run concurrently with each other and with any other sentence Blaisdell was serving.

Blaisdell appealed both judgments, and on April 30, 1997, this court affirmed both judgments by Summary Disposition Order. See State v. Blaisdell, 85 Hawai'i 118, 937 P.2d 959 (App. 1997).

On April 7, 1999 Blaisdell filed three HRPP Rule 40 petitions for post-conviction relief. On August 5, 1999, the circuit court dismissed the petitions without a hearing, and on Blaisdell's appeal, this court affirmed. See State v. Blaisdell, 96 Hawai'i 113, 26 P.3d 602 (App. 2001). Blaisdell's application for writ of certiorari to the Hawai'i Supreme Court was initially granted, but subsequently dismissed as improvidently granted.

On March 14, 2000, Blaisdell brought another HRPP Rule 40 petition, alleging ineffective assistance of appellate counsel. The circuit court granted the petition, but on appeal, this court reversed on grounds that Blaisdell had waived his claim by failing to raise the issue in his three earlier petitions. See Blaisdell v. State, 100 Hawai'i 322, 59 P.3d 957 (App. 2002). Blaisdell's application for writ of certiorari to the supreme court was denied on December 20, 2002.

Blaisdell filed two more petitions for post-conviction relief on May 8, 2001. The circuit court granted the State's motion to strike one of the petitions on grounds that the issues raised had been previously ruled on or waived, or was patently frivolous. On appeal by Blaisdell, this court affirmed. See Blaisdell v. State, 101 Hawai'i 437, 70 P.3d 663 (App. 2003). Blaisdell's application for writ of certiorari was subsequently denied by the supreme court. The circuit court denied Blaisdell's other petition on May 10, 2002, and the Hawai'i Supreme Court subsequently affirmed the denial on grounds that Blaisdell's ineffective-assistance-of-counsel claim had been waived.

On June 1, 2001, Blaisdell filed a Motion to Correct or Reduce Sentence pursuant to Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348 (2000). The circuit court denied the petition on May 9, 2002, and on appeal by Blaisdell, the Hawai'i Supreme Court affirmed. State v. Blaisdell, No. 25145, 2004 WL 2066869 (Haw. 2004).

On July 18, 2005, Blaisdell filed, pro se, the HRPP Rule 40 Petition to Correct Illegal Sentence that underlies this appeal. Blaisdell alleged that: (1) he was sentenced to an illegal life sentence because the facts used to enhance his sentence were not mentioned in the indictment or presented to the jury; and (2) in light of the Hawai'i Supreme Court's opinion in

State v. Mueller, 102 Hawai'i 391, 76 P.3d 943 (2003), he was improperly convicted of three class A felonies when he should have been convicted of three class C felonies instead. On February 27, 2006, the circuit court entered its Findings of Fact, Conclusions of Law, and Order Denying Petition to Correct Illegal Sentence, Filed July 18, 2005, Without a Hearing. Blaisdell timely appealed.

On appeal, Blaisdell argues that:

(1) The circuit court erred when it granted the State's motions for extended prison terms, in violation of Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348;

(2) His convictions for three counts of Sexual Assault in the First Degree based on acts of cunnilingus must be reversed in light of the Hawai'i Supreme Court's holding in State v. Mueller, 102 Hawai'i 391, 76 P.3d 943;

(3) The circuit court erroneously sentenced him on multiple counts stemming from a single indictment; and

(4) The circuit court "completely ignored the 5th, 6th, and 14th Amendments of the U.S. Constitution."

Upon review of the record and the briefs submitted by the parties, and having given due consideration to the arguments presented, as well as the relevant case law and statutes, we conclude that Blaisdell either waived issues 1 and 4 when he failed to raise them during his direct appeal or his prior HRPP

Rule 40 petitions, or they have already been ruled upon by this court or the Hawai'i Supreme Court. Stanley v. State, 76 Hawai'i 446, 450, 879 P.2d 551, 555 (1994).

As to Blaisdell's Mueller argument, we conclude, based on State v. Garcia, 96 Hawai'i 200, 214, 29 P.3d 919, 933 (2001), that Blaisdell was not a "similarly situated defendant[]" whose case was pending on direct review or not yet final at the time Mueller was decided, and therefore, Mueller does not apply retroactively to his case.

We also reject Blaisdell's argument regarding his extended sentences. The circuit court imposed its sentences based on his "multiple offender" status pursuant to HRS § 706-662(4)(a),<sup>1</sup> and not on any "repeat offender" status governed by HRS § 706-606.5,<sup>2</sup> as Blaisdell contends.

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<sup>1</sup> The relevant part of Hawaii Revised Statutes (HRS) § 706-662(4)(a) (Supp. 2005) provides:

**Criteria for extended terms of imprisonment.** 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:

. . . . .

- (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[.]

<sup>2</sup> The relevant part of HRS § 706-606.5 (Supp. 2005) provides:

(continued...)

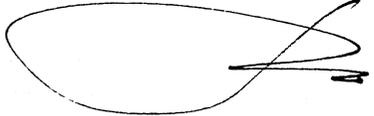
Accordingly, we affirm the Findings of Fact, Conclusions of Law, and Order Denying Petition to Correct Illegal Sentence, Filed July 18, 2005, Without a Hearing, entered by the circuit court on February 27, 2006.

DATED: Honolulu, Hawai'i, January 5, 2007.

On the briefs:

Richard Blaisdell,  
petitioner-appellant, pro se.

Brian R. Vincent,  
deputy prosecuting attorney,  
City and County of Honolulu,  
for respondent-appellee.

*James A Burns*  
*Corinne K A Watanabe*  


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<sup>2</sup>(...continued)

**Sentencing of repeat offenders.** (1) . . . [A]ny person convicted of . . . [section] 707-732 relating to sexual assault or rape in the third degree . . . and who has a prior conviction or prior convictions for . . . any of the class C felony offenses enumerated above . . . shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole during such period . . . .

. . . .

(7) For purposes of this section:

(a) Convictions under two or more counts of an indictment or complaint shall be considered a single conviction without regard to when the convictions occur[.]