

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27412

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

STATE OF HAWAI'I, Plaintiff-Appellant, v.  
ANTHONY HATORI, Defendant-Appellee

E.M. RINANDU  
CLERK, APPELLATE COURTS  
STATE OF HAWAI'I

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT CIRCUIT  
(Cr. No. 03-1-200)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Plaintiff-Appellant the State of Hawai'i (State) appeals from the June 22, 2005 Final Judgment and Sentence of the Circuit Court of the Third Circuit (circuit court)<sup>1</sup> imposed upon Defendant-Appellee Anthony Hatori (Hatori). After a careful review of the issues raised, the arguments made, authorities cited and the record in this case, we affirm.

The State challenges the circuit court's denial of its motion to sentence Hatori to a mandatory minimum term sentence under Hawaii Revised Statutes (HRS) § 706-606.5 (1993 & Supp. 2005).<sup>2</sup> On May 9, 2005, the State filed a Motion to Impose

<sup>1</sup> The Honorable Glenn S. Hara presided.

<sup>2</sup> At the time of the commission of the first offense in the instant case through to the time of sentencing, HRS § 706-606.5(1) provided, in pertinent part,

Notwithstanding section 706-669 and any other law to the contrary, any person convicted of . . . theft in the second degree; . . . unauthorized control of propelled vehicle; . . . forgery in the second degree . . . and who has a prior conviction or prior convictions for . . . a class B felony, . . . shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole during such period as follows:

(a) One prior felony conviction:

. . . .

(iv) Where the instant conviction is for a class C felony offense enumerated above--one year, eight months[.]

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Mandatory Term of Imprisonment Pursuant to HRS § 706-606.5. Although the State conceded that Hatori did not commit the crimes in this case within the ten-year statutory period of an earlier felony conviction, it argued that the repeat offender statute should be applied because Hatori's sentence to probation for the prior conviction was revoked and he was resentenced within the ten-year period prescribed by HRS § 706-606.5.<sup>3</sup> At the hearing on the motion and sentencing on June 20, 2005, the parties stipulated to the following facts:

- A. On January 24, 2005, in Cr. No. 03-1-200, Defendant pled guilty [to] 7 "C" felonies covered under HRS 706-606.5(1):
  - i. Count II = Forgery in the 2nd Degree
  - ii. Count IV = Forgery in the 2nd Degree
  - iii. Count VI = Forgery in the 2nd Degree
  - iv. Count V = Attempted Theft in the 2nd Degree
  - v. Count VII = Forgery in 2nd the [sic] Degree
  - vi. Count VIII = UCPV
  - vii. Count X = Theft in 2nd the [sic] Degree
- B. The dates of offenses in Cr. No. 03-1-0200 [sic] range from November 17, 2002 to August 6, 2003.
- C. At the time Defendant committed the offense in the instant case, he had prior felony convictions under Cr. No. 92-014 and 92-082; (EXHIBITS 1-9)
- D. On August 5, 1992, in Cr. No. 92-082, Defendant was convicted of 2 "B" felonies - 2 counts of Burglary in the 1st Degree and one "C" felony Promoting a Dangerous Drug in the 3rd Degree and sentenced to ten years in prison.
- E. On August 5, 1992, in Cr. No. 92-014, Defendant was convicted of 1 count of Burglary in the 2nd Degree a "C" felony and sentenced to five years prison.

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<sup>3</sup> HRS § 706-606.5(2) provides, in relevant part,

(2) Except as in subsection (3), a person shall not be sentenced to a mandatory minimum period of imprisonment under this section unless the instant felony offense was committed during such period as follows:

. . . .

- (d) Within ten years after a prior felony conviction where the prior felony conviction was for a class B felony[.]

- F. On March 29, 1994, Defendant's sentences in Cr. No.s [sic] 92-014 and 92-082 were reconsidered and Defendant was placed on probation.
- G. On March 22, 1996, revocation proceedings in Cr. No.s [sic] 92-014 and 92-082 were initiated.
- H. On September 17, 1996, nunc pro tunc to September 13, 1996, judgments were in filed [sic] Cr. No.s [sic] 92-014 and 92-082 and Defendant was resentenced to prison [for] ten years in Cr. No.s [sic] 92-014 and 92-082.
- I. Defendant did NOT committed [sic] the crimes (November 17, 2002 to August 6, 2003) in Cr. No. 03-1-200 within 10 years of being originally sentence[d] (August 5, 1992) in Cr. No.s [sic] 92-014 and 92-082.
- J. Defendant committed the crimes (November 17, 2002 to August 6, 2003) in Cr. No. 03-1-200 within 10 years of being reconsider [sic] to probation (March 29, 1994) and resentence[d] (September 17, 1996) in Cr. No.s [sic] 92-014 and 92-082.
- K. Defendant's prison terms in Cr. No.s [sic] 92-014 and 92-082 ended September 13, 2004.
- L. Throughout Criminal No.s [sic] 03-1-0200, 92-014, 92-082, Defendant was represented by an attorney licensed to practice in the State of Hawaii.

The circuit court denied the motion, ruling that,

under the statutes and under the [*State v. Rodrigues*, 68 Haw. 124, 132, 706 P.2d 1293, 1299 (1985)] definition of convictions, that the period of conviction runs from the first judgment of conviction, which is on, in this case, Mr. Hatori's pleas of guilty or a verdict, and a judgment entered thereon, establishing his guilt. Adjudication of guilt. With that interpretation, there can only be one conviction, although there can be multiple sentences or adjustment to a sentence under the statute.

We agree. The window created by HRS § 706-606.5 expressly begins with the conviction entered in the prior covered felony and HRS § 706-606.5(7)(c) provides that the "conviction occurs on the date judgment is entered." The State's interpretation would lead to the conclusion that there can be multiple convictions for the same offense. See *State v. Naititi*, 104 Hawai'i 224, 232, 87 P.3d 893, 901 (2004) ("[t]he legislature is presumed not to intend an absurd result, and legislation will be construed to avoid, if possible, inconsistency, contradiction,

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and illogicality") (quoting State v. Haugen, 104 Hawai'i 71, 76-77, 85 P.3d 178, 183-84 (2004)) (internal quotation marks omitted).

Therefore,

The June 22, 2005 Final Judgment and Sentence of the Circuit Court of the Third Circuit is affirmed.

DATED: Honolulu, Hawai'i, June 27, 2008.

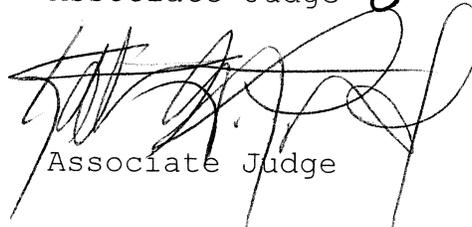
On the briefs:

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Presiding Judge

Stanton C. Oshiro,  
for Defendant-Appellee.

  
Associate Judge

  
Associate Judge