

NO. 27564

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
ANTHONY A. KANEAO, JR., Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
(HPD TRAFFIC NO. 5803233MO)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Anthony A. Kaneao, Jr. (Kaneao) appeals from September 19, 2005, Judgment entered by the District Court of the First Circuit (district court).<sup>1</sup> Pursuant to a trial on stipulated facts, the district court found Kaneao guilty of driving without a license (DWOL), in violation of Hawaii Revised Statutes (HRS) § 286-102 (Supp. 2004).<sup>2</sup> The district court found that Kaneao had four prior DWOL convictions within five years of his commission of the current DWOL offense, and it

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<sup>1</sup> The Honorable Gerald Kibe presided.

<sup>2</sup> There are two versions of HRS § 286-102 in the 2004 Supplement. The version applicable to this appeal is the one that was in effect until September 29, 2005, which provided, in relevant part:

(a) No person . . . shall operate any category of motor vehicles listed in this section without first being appropriately examined and duly licensed as a qualified driver of that category of motor vehicles.

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sentenced Kaneao, pursuant to HRS § 286-136(b) (2007),<sup>3</sup> to pay a \$650 fine and other fees and assessments.

Kaneao's sole point of error on appeal is that the district court erred in determining the number of prior DWOL convictions he had "in the preceding five-year period" under HRS § 286-136(b). The district court measured "the preceding five-year period" from the date the defendant committed the current DWOL offense (the "offense-commission date"). Kaneao had four prior DWOL convictions within five years of the offense-commission date.

Kaneao argues that HRS § 286-136(b) should be interpreted as measuring the "preceding five-year period" from the date the defendant is sentenced on the current DWOL offense (the "offense-sentencing date"). Under this interpretation, Kaneao would only have two prior countable DWOL convictions. Kaneao notes that the district court stated that it would have imposed a reduced fine of \$500 if Kaneao only had two prior countable DWOL convictions instead of four. He therefore contends that we should vacate his sentence and remand the case for imposition of a \$500 fine.

In State v. Vierra, No. 27508, --- Hawai'i ---, --- P.3d ---, 2008 WL 2514797 (Haw. App. June 25, 2008), this court recently rejected the identical argument regarding the interpretation of HRS § 286-136(b) urged by Kaneao in this appeal. In Vierra, we concluded that under HRS § 286-136(b), it is the offense-commission date that is used to determine the number of countable prior convictions the defendant has for the

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<sup>3</sup> HRS § 286-136(b) provides, in relevant part:

(b) Any person who is convicted of violating section 286-102 . . . shall be subject to a minimum fine of \$500 and a maximum fine of \$1,000, or imprisoned not more than one year, or both, if the person has two or more prior convictions for the same offense in the preceding five-year period.

(Emphasis added.)

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same offense in the preceding five-year period. *Id.* at ---, --- P.3d at ---, 2008 WL 2514797, at \*9. Accordingly, we affirm the sentence imposed by the district court as reflected in the Judgment it filed on September 19, 2005.<sup>4</sup>

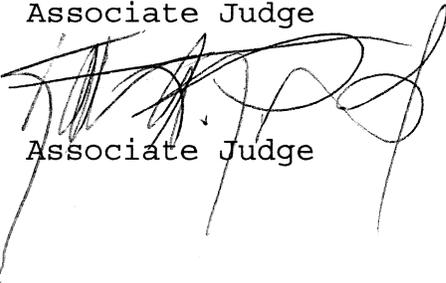
DATED: Honolulu, Hawai'i, July 30, 2008.

On the briefs:

Henry P. Ting,  
Deputy Public Defender,  
for Defendant-Appellant

Loren J. Thomas,  
Deputy Prosecuting Attorney,  
City & County of Honolulu  
for Plaintiff-Appellee

  
Associate Judge

  
Associate Judge

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<sup>4</sup> We note that although the trial transcript shows that the district court found Kaneao guilty of the charged offense, the "FOUND GUILTY" box on the written Judgment is not filled in. We instruct the district court to file a corrected judgment which reflects that Kaneao was found guilty at trial.