

FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

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

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STATE OF HAWAI'I, Plaintiff-Appellee,
v.
WALTER LEE CUTSINGER, Defendant-Appellant

NO. 28203

K. HAHAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2008 JAN 31 PM 3:20

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 05-1-1409)

January 31, 2008

WATANABE, PRESIDING JUDGE, FOLEY, AND NAKAMURA, JJ.

ORDER OF AMENDMENT

The opinion of the court, filed on January 30, 2008, is hereby amended as follows:

1. At page 1, in the caption, the criminal number is incorrect and should read: "(Cr. No. 05-1-1409)".

2. At page 37, in the last paragraph of the opinion, the portion of the text that reads "Amended Judgment entered by the circuit court on September 7, 2006" should be deleted and replaced with text that reads "extended term sentence imposed on Cutsinger's conviction for second degree burglary (Count 1)", so that as amended the last paragraph of the opinion reads as follows:

We vacate the extended term sentence imposed on Cutsinger's conviction for second degree burglary (Count 1), and we remand the case for further proceedings consistent with this opinion.

3. At page 37, in the attorney-credit section, 1) deputy prosecuting attorney Donn Fudo should be credited with writing the "answering" brief, and 2) credit to attorneys regarding Plaintiff-Appellee's motion to vacate sentence and remand for resentencing should be added before "On the amicus

curiae brief:" so that the attorney-credit section read as follows:

Glenn D. Choy
for Defendant-Appellant

Mark J. Bennett
Attorney General
State of Hawaii
(Donn Fudo, Deputy Prosecuting
Attorney, City and County of
Honolulu on the answering brief)
for Plaintiff-Appellee

On the motion to vacate sentence and remand for
resentencing:

Kimberly Tsumoto Guidry
Deputy Solicitor General
Girard D. Lau
First Deputy Solicitor General
for Plaintiff-Appellee

On the amicus curiae brief:

Deborah L. Kim
Deputy Public Defender

The clerk of the court is directed to incorporate the foregoing changes in the original opinion and take all necessary steps to notify the publishing agencies of these changes.

Corinne K. A. Watanabe

Daniel R. Foley

Craig A. Nakamura