

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER

NO. 28475

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

LOUIE M. CASPINO, Petitioner-Appellant, v.
STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P.P. 06-1-0056; CRIMINAL NO. 97-1047)

NORMA T. YARA
CLERK, APPELLATE COURT
STATE OF HAWAII

2008 JUL 29 AM 8:03

FILED

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Louie M. Caspino (Caspino) appeals from the "Order Denying Petition for Post-Conviction Relief Without a Hearing" that was filed on March 21, 2007, in the Circuit Court of the First Circuit (circuit court).¹

In the underlying criminal case, Caspino was convicted of three counts of first degree robbery and one count of being a felon in possession of ammunition. The trial court granted the prosecution's motion to impose extended terms of imprisonment pursuant to Hawaii Revised Statutes (HRS) §§ 706-662(1), -662(3), and -662(4) (1993). It sentenced Caspino to concurrent extended terms of imprisonment of life with the possibility of parole on the robbery convictions and twenty years on the conviction for being a felon in possession of ammunition. The trial court entered its Judgment on July 22, 1998.

On February 3, 2000, the Hawai'i Supreme Court affirmed the trial court's Judgment by Summary Disposition Order in Caspino's direct appeal. The Hawai'i Supreme Court entered its Judgment on Appeal on February 15, 2000. There is no indication that Caspino filed a petition for writ of certiorari with the United States Supreme Court to review the Hawai'i Supreme Court's Judgment.

¹ The Honorable Hilary B. Gangnes presided.

On May 30, 2002, Caspino filed his first petition for post-conviction relief, which was denied without a hearing on September 11, 2002. On October 24, 2006, Caspino filed his second petition for post-conviction relief, which is the subject of this appeal.

On appeal, Caspino argues that under Apprendi v. New Jersey, 530 U.S. 466 (2000), the trial court's imposition of extended term sentences was illegal. He contends that his extended term sentences should be vacated and that he should be resentenced to non-extended terms of imprisonment. We disagree.

Apprendi was decided on June 26, 2000. Caspino's underlying criminal case was already final on direct review before Apprendi was decided. The holding in Apprendi does not apply retroactively to cases that were final on direct review before Apprendi was decided. State v. Gomes, 107 Hawai'i 308, 312-14, 113 P.3d 184, 188-90 (2005); United States v. Sanchez-Cervantes, 282 F.3d 664, 667-71 (9th Cir. 2002). Accordingly, the Apprendi decision does not provide a basis for invalidating Caspino's extended term sentences.

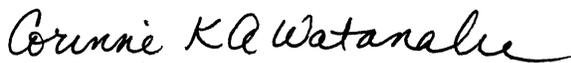
IT IS HEREBY ORDERED that the circuit court's "Order Denying Petition for Post-Conviction Relief Without a Hearing," which was filed on March 21, 2007, is affirmed.

DATED: Honolulu, Hawai'i, July 29, 2008.

On the briefs:

Louie M. Caspino
Pro Se Petitioner-Appellant

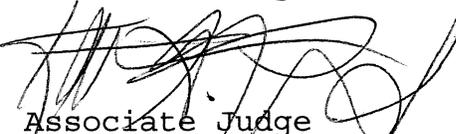
Anne K. Clarkin,
Deputy Prosecuting Attorney,
City & County of Honolulu
for Respondent-Appellee



Presiding Judge



Associate Judge



Associate Judge