

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29474

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

EDMUND M. ABORDO, Petitioner-Appellant, v
STATE OF HAWAII, Respondent-Appellee

Norma T. Kauralo
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STATE OF HAWAII

2009 SEP 22 AM 8:03

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P.P. No. 07-1-0044)
(Cr. No. 93-0737)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding J., Foley, and Leonard, JJ.)

Petitioner-Appellant Edmund M. Abordo (Abordo) appeals from the Findings of Fact, Conclusions of Law, and Order Denying Petition for Post-Conviction Relief Without a Hearing entered on October 29, 2008 by the Circuit Court of the First Circuit (circuit court).¹ We affirm.

Abordo raises several points on appeal, but all of them relate to his claim that he was illegally sentenced to an extended term of imprisonment under Hawaii Revised Statutes (HRS) § 706-662(4) (1993) because the Hawai'i Supreme Court held in State v. Maugaotega, 115 Hawai'i 432, 168 P.3d 562 (2007), that HRS § 706-662 was unconstitutional on its face.

Contrary to Abordo's argument, Abordo's sentence to an extended term of imprisonment was not void ab initio. See State v. Jess, 117 Hawai'i 381, 184 P.3d 133 (2008), and Loher v. State, 118 Hawai'i 522, 193 P.3d 438 (App. 2008).

Moreover, Abordo previously challenged his extended-term sentence in a direct appeal; three Hawai'i Rules of Penal Procedure (HRPP) Rule 40 petitions for post-conviction relief which were denied by orders affirmed on appeal; a motion for correction of illegal sentence pursuant to HRPP Rule 35; and a petition for writ of habeas corpus filed in the United States

¹ The Honorable Derrick H. M. Chan presided.

District Court for the District of Hawai'i, which was denied by an order that the Ninth Circuit Court of Appeals and United States Supreme Court declined to review. Therefore, the issues raised by Abordo were previously ruled upon or were waived, and relief pursuant to HRPP Rule 40 was not available. HRPP Rule 40(a)(3).

Affirmed.

DATED: Honolulu, Hawai'i, September 22, 2009.

On the briefs:

Edmund M. Abordo,
Petitioner-Appellant, pro se.

James M. Anderson,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Respondent-Appellee.

Corinne K. G. Wataneke

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