

\*\*\*NOT FOR PUBLICATION\*\*\*

NO. 25883

IN THE SUPREME COURT OF THE STATE OF HAWAII

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STATE OF HAWAII

2005 APR -4 PM 12:50

FILED

STATE OF HAWAII, Plaintiff-Appellant

vs.

JAMES PAUL ILALIO, also known as Lopaki Sakalia  
and Vitti Ilalio, Defendant-AppelleeAPPEAL FROM THE FIRST CIRCUIT COURT  
(CR. NO. 02-1-2609)SUMMARY DISPOSITION ORDER(By: Moon, C.J., Levinson, and Duffy, JJ.;  
and Acoba, J., Dissenting, With Whom Nakayama, J., Joins)

By its June 10, 2003 notice, Plaintiff-Appellee State of Hawai'i (the prosecution) appeals from the May 29, 2003 order of the circuit court of the first circuit (the court)<sup>1</sup> dismissing the December 3, 2002 indictment charging Defendant-Appellee James Paul Ilalio, also known as Lopaki Sakalia and Vitti Ilalaio (Defendant) with Count I, habitually driving under the influence of intoxicating liquor or drugs, Hawai'i Revised Statutes (HRS §§ 291-4.4(a)(2) (Supp. 2000) and/or 291-4.4(a)(2) (Supp 2000) and Count II, driving after license suspended or revoked for driving under the influence of intoxicating liquor, HRS § 291-4.5 (1993 & Supp. 2000). On appeal the prosecution argues, inter alia that, as to HRS §§ 291-4.4(a)(1) and -4.4(a)(2) and HRS

<sup>1</sup> The Honorable Sandra A. Simms presided.

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§ 291-4.5, "the trial court abused its discretion when it dismissed the indictment as the [prosecution] properly charged Defendant under the statutes that were in effect at the time Defendant committed the offenses in question." State v. Dominguez, --- Hawai'i ---, ---, 107 P.3d 409, 411 (2005), held that HRS § 291-4.4 (Supp. 1999) was substantially re-enacted in HRS § 291E-61 (Supp. 2001) and is dispositive of Count I.<sup>2</sup> State v. Young, No. 25610, slip op. at 3-4 (Mar. 30, 2005), held that HRS § 291-4.5 (1993 & Supp. 2000) was substantially re-enacted in HRS § 291E-62 (Supp. 2004) and is dispositive of Count II. Therefore,

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that the court's order filed on May 29, 2003, from which the appeal is taken, is vacated with

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<sup>2</sup> Defendant's arguments that (1) "prosecution is barred by the general rule prohibiting post-repeal prosecutions," (2) "prosecution is barred by the plain meaning of Act 189's repeal of HRS §§ 291-4.4 and 291-4.5," and (3) "prosecution is barred because HRS § 291E-61 is not [a] 'substantial re-enactment' of HRS § 291-4.4 and HRS § 291E-62 is not a 'substantial re-enactment' of HRS § 291-4.5" are disposed of and subsumed in the analyses set forth in the majority and dissenting opinions in Dominques and Young. Defendant argues further that "[u]nder the 'rule of lenity,' an ambiguity, if any, attendant to the Legislature's repeal of HRS §§ 291-4.4 and 291-4.5 should be resolved in [Defendant's] favor." However, no ambiguity is discerned in the repeal of HRS §§ 291-4.4 and 291-4.5.

respect to Count I and vacated with respect to Count II, and the case remanded to the court in accordance with this order.

DATED: Honolulu, Hawai'i, April 4, 2005.

On the briefs:

Mark Yuen, Deputy Prosecuting Attorney, City & County of Honolulu, for plaintiff-appellant.

James S. Tabe, Deputy Public Defender, for defendant-appellee.

