* * * **NOT FOR PUBLICATION** * * *

NO. 25975

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

PAUL DENNIS CORONEL, aka PAUL KAY CORONEL, Defendant-Appellant.

APPEAL FROM THE THIRD CIRCUIT COURT
(CR. NO. 87-437)

SUMMARY DISPOSITION ORDER
(By: Moon, C.J., Levinson, and Nakayama, JJ.; with Acoba, J., concurring separately, and with whom Duffy, J., joins)

Defendant-appellant Paul Dennis Coronel, aka Paul Kay Coronel, appeals from the Circuit Court of the Third Circuit's July 29, 2003 final order[1] denying his second amended motion under Hawai'i Rules of Penal Procedure (HRPP) Rule 35 for correction of sentence for multiple counts of theft in the first degree. As points of error on appeal, Coronel contends that in denying his motion, the circuit court erred when it failed to correct a sentence that was: (1) an illegal extended and consecutive sentence; (2) based on an unconstitutional indictment; and (3) based on improper instructions to the jury. The State of Hawai'i counters that: (1) the appellate court should not consider claims previously waived or ruled upon on direct appeal or other collateral attacks, including HRPP Rule 40

[1] The Honorable Greg K. Nakamura presided over this matter.

proceedings; and (2) the rule in Apprendi v. New Jersey, 530 U.S. 466 (2000) (holding that where factors other than prior convictions are used to increase the maximum sentence authorized for a crime, those factors must be submitted to the jury and proved beyond a reasonable doubt), does not apply retroactively to preclude extended term sentences in cases where the judgment and direct appeal were already final prior to the announcement of the rule in Apprendi.

Upon carefully reviewing the record and the briefs submitted by the parties, and having given due consideration to the arguments advocated and the issues raised, we resolve the parties' contentions and hold as follows: (1) Coronel's arguments regarding the indictment and jury instructions are barred because they were already raised and ruled upon in his direct appeal and other post-conviction proceedings.[2] See Tabieros v. Clark Equip. Co., 85 Hawai'i 336, 352 n.8, 944 P.2d 1279, 1295 n.8 (1997) (law of the case doctrine prevents a party from subsequently reopening a question of law already decided in a prior appellate proceeding in the same case); cf. HRPP Rule 40(a)(3) (Rule 40 relief not available where the issues sought to

[2] Coronel's conviction was affirmed on direct appeal by memorandum opinion of this court on June 18, 1990. State v. Coronel, No. 13919, 71 Haw. 657, 794 P.2d 618 (1990). His HRPP Rule 40 petition for post-conviction relief was denied by summary disposition order of this court on September 30, 1999. State v. Coronel, No. 21389, 92 Hawai'i 632, 994 P.2d 564 (1999). As Coronel concedes here, he raised both the indictment and jury instruction issues in those proceedings.

be raised have been previously ruled upon); (2) Coronel's extended sentence argument is also precluded because his judgment of conviction and direct appeal were already final prior to the announcement of the rule in Apprendi. See State v. Gomes, 107 Hawai'i 308, 314, 113 P.3d 184, 190 (2005) (rule in Apprendi does not apply retroactively on collateral attack). Therefore,

IT IS HEREBY ORDERED that the circuit court's July 29, 2003 order denying Coronel's second amended motion for correction of sentence is affirmed.

DATED: Honolulu, Hawai'i, August 30, 2005.

On the briefs:

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