

NO. 27311

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Respondent/Plaintiff-Appellee

vs.

PAUL A. KECK, Petitioner/Defendant-Appellant

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2006 OCT -4 PM 3:28

FILED

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CR. NO. 04-1-1525)

ORDER REJECTING APPLICATION FOR WRIT OF CERTIORARI

(By: Levinson, J., for the majority;¹
with Acoba, J., Concurring Separately
and Dissenting, With Whom Duffy, J., Joins)

Petitioner/Defendant-Appellant Paul A. Keck's
application for writ of certiorari, filed on September 14, 2006,
is hereby rejected.

DATED: Honolulu, Hawai'i, October 4, 2006.

Earle A. Partington
for petitioner/
defendant-appellant
on the application

FOR THE MAJORITY:

Steven H. Levinson

STEVEN H. LEVINSON
Associate Justice

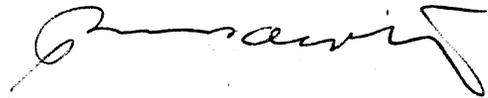


CONCURRENCE AND DISSENT BY ACOBA, J.,
IN WHICH DUFFY, J., JOINS

I concur in part, but I dissent as to the extended term
sentences issue. As to that issue, I would grant certiorari.
See State v. White, 110 Hawai'i 79, 91, 129 P.3d 1107, 1119

¹ Considered by: Moon, C.J., Levinson and Nakayama, JJ.; with Acoba, J., concurring separately and dissenting, with whom Duffy, J., joins.

(2006) (Acoba, J., dissenting, joined by Duffy, J.) (Because "[t]he Ninth Circuit's . . . decision [in Kaua v. Frank, 436 F.3d 1057 (9th Cir. 2006)] has in large part undercut the . . . 'intrinsic-extrinsic fact' distinction [in State v. Rivera, 106 Hawai'i 146, 102 P.3d 1044 (2004), cert. denied, --- U.S. --- (2005),] and the two-step sentencing process[,] . . . the availability of federal habeas proceedings and the resulting impact on the parties and both state and federal courts makes a reexamination of our extended-term sentencing decisions even more imperative.")



James E. Duffy, Jr.