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NO. 27692

IN THE SUPREME COURT OF THE STATE OF HAWAII

EM. RIMANDO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

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FILED

STATE OF HAWAII, Respondent/Plaintiff-Appellee,

vs.

RYAN-SETH KIAHA, Petitioner/Defendant-Appellant.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS  
(CR.NO. 04-1-1410)

ORDER ACCEPTING APPLICATION FOR A WRIT OF CERTIORARI  
AND AFFIRMING IN PART AND VACATING IN PART  
THE SEPTEMBER 6, 2007 JUDGMENT OF THE  
INTERMEDIATE COURT OF APPEALS

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

On September 27, 2007, petitioner/defendant-appellant Ryan-Seth Kiaha timely petitioned this court for a writ of certiorari to review the Intermediate Court of Appeals' (ICA) September 6, 2007 judgment on appeal, entered pursuant to its July 27, 2007 summary disposition order. Therein, the ICA affirmed the Circuit Court of the First Circuit's<sup>1</sup> April 5, 2005 judgment, convicting Kiaha of the offense of unauthorized control of a propelled vehicle, in violation of Hawai'i Revised Statutes (HRS) § 708-836 (Supp. 2004). The ICA also affirmed the trial

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<sup>1</sup> The Honorable David W. Lo presided over the underlying proceedings.

court's imposition of an extended ten-year term of imprisonment as a "persistent offender," under HRS §§ 706-661 (Supp. 2005) and 706-662(1) (Supp. 2005), with a mandatory minimum of five years as a repeat offender.

Having given due consideration to the arguments advanced and the issues raised by Kiaha in his application and upon careful review of the record and the briefs submitted by Kiaha and respondent/plaintiff-appellee State of Hawai'i,

IT IS HEREBY ORDERED that Kiaha's application is accepted, and

IT IS FURTHER ORDERED that the September 6, 2007 judgment of the ICA is affirmed in all respects, with the exception of the extended term sentence imposed against Kiaha in light of this court's recent opinion in State v. Maugaoteqa, No. 26657 (Haw. Oct. 1, 2007) (holding the extended sentencing scheme in HRS §§ 706-661 and 706-662 unconstitutional). That portion of the ICA's judgment, affirming the trial court's imposition of the extended term sentence, is vacated, and the case is remanded to the trial court for resentencing.

DATED: Honolulu, Hawai'i, October 30, 2007.

Naomi Hirayasu, for  
petitioner/defendant-  
appellant on the  
application

Stephen K. Tsushima,  
Deputy Prosecuting Attorney,  
on the record for respondent/  
plaintiff-appellee



Steven H. Levinson

