IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

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STATE OF HAWAIʻI, Plaintiff-Appellee/
Respondent-Appellee,

vs.

MARK A. BRANTLEY, Defendant-Appellant/
Movant-Appellant.

NO. 22635

APPEAL FROM THE SECOND CIRCUIT COURT
(CR. NO. 93-0433(2))

OCTOBER 25, 2002

MOON, C.J., and LEVINSON, J.;
LEVINSON, J., CONCURRING SEPARATELY; RAMIL, J.,
CONCURRING SEPARATELY, WITH WHOM NAKAYAMA, J.,
JOINS; AND ACOBA, J., DISSENTING

OPINION BY MOON, C.J.

Defendant-appellant/movant-appellant Mark A. Brantley appeals from the second circuit court's May 25, 1999 order denying his Hawaiʻi Rules of Penal Procedure (HRPP) Rule 35 "Motion to Reverse Conviction and Correct Illegal Sentence" for his 1994 conviction of carrying or use of firearm in the commission of a separate felony, in violation of Hawaiʻi Revised

Statutes (HRS) § 134-6(a) (1993).[1] Brantley's motion was brought pursuant to this court's decision in State v. Jumila, 87 Hawai'i 1, 950 P.2d 1201 (1998), wherein we held that a defendant could not be convicted of both the HRS § 134-6(a) violation and the separate, underlying felony. See id. at 3, 950 P.2d at 1203. According to Jumila, the remedy for the inappropriate conviction of both of these offenses, which Brantley sought, is to reverse the conviction for the offense which was of the lesser grade -- in this case, the firearms offense. See id. at 4, 950 P.2d at 1204.

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[1] HRS § 134-6 provides in relevant part:

> **Carrying or use of firearm in the commission of a separate felony; place to keep firearms; loaded firearms; penalty.** (a) It shall be unlawful for a person to knowingly carry on the person or have within the person's immediate control or intentionally use or threaten to use a firearm while engaged in the commission of a separate felony, whether the firearm was loaded or not, and whether operable or not; provided that a person shall not be prosecuted under this subsection where the separate felony is:
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> (1) A felony offense otherwise defined by this chapter;
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> (2) The felony offense of reckless endangering in the first degree under section 707-713;
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> (3) The felony offense of terroristic threatening in the first degree under section [707-716(1)(a)], [707-716(1)(b)], and [707-716(1)(d)]; or
>
> (4) The felony offenses of criminal property damage in the first degree under section 708-820 and criminal property damage in the second degree under section 708-821 and the firearm is the instrument or means by which the property damage is caused.

(Bold emphasis and internal brackets in original.) Unless specified otherwise, references in this opinion to HRS § 134-6(a) are to the 1993 version of the statute quoted above.

In his appeal, Brantley argues that the circuit court erred in denying his motion because the court incorrectly determined that Jumila does not apply retroactively to him. Plaintiff-appellee/respondent-appellee State of Hawai‘i (State) answers that the circuit court correctly determined that Jumila does not apply retroactively to Brantley. Alternatively, the State contends that our holding in Jumila, barring conviction of both HRS § 134-6(a) and the separate felony, should be overruled. We affirm the circuit court's order because we agree with the State's alternative argument and overrule our holding in Jumila that a defendant cannot be convicted of both HRS § 134-6(a) and its separate felony.

I. BACKGROUND

On November 4, 1994, Brantley was convicted of, inter alia, carrying or use of firearm in the commission of a separate felony and second degree murder, the separate felony in the former offense. On January 12, 1999, Brantley filed an HRPP Rule 35 motion seeking to reverse his conviction for the firearms offense. In opposition, the State argued that Jumila, a 1998 decision, should not be applied retroactively to Brantley's 1994 conviction. Among the arguments cited by the State was the fact that the legislature was considering passage of a bill that would "vitiate" Jumila. At the February 4, 1999 initial hearing on the motion, the circuit court continued the matter and requested

supplemental briefing regarding the pending legislation and what, if any, impact the legislation would have on the court's determination regarding the question of retroactivity. On April 13, 1999, the Governor signed into law Act 12, which amended HRS § 134-6 to explicitly state that an individual could be convicted of both HRS § 134-6(a) and the separate felony. See 1999 Haw. Sess. L. Act 12, at 12.[2] Subsequently, the circuit court denied Brantley's motion, indicating that the 1999 amendment to HRS § 134-6 was an important factor in its decision not to apply Jumila retroactively. Brantley timely appealed.

II. STANDARDS OF REVIEW

A. Statutory Interpretation

The question whether a defendant can be convicted of both carrying or use of firearm in the commission of a separate felony and the separate felony is a question of statutory interpretation. We interpret statutes de novo. See State v. Cornelio, 84 Hawai'i 476, 483, 935 P.2d 1021, 1028 (1997) (citations omitted).

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[2] Act 12 added the following language to HRS § 134-6(e):

> A conviction and sentence under subsection (a) or (b) shall be in addition to and not in lieu of any conviction and sentence for the separate felony; provided that the sentence imposed under subsection (a) or (b) may run concurrently or consecutively with the sentence for the separate felony.

1999 Haw. Sess. L. Act 12, § 1 at 12 (emphasis added).

> When construing a statute, our foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. And we must read statutory language in the context of the entire statute and construe it in a manner consistent with its purpose.
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> When there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists. . . .
>
> In construing an ambiguous statute, "[t]he meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning." HRS § 1-15(1) [(1993)]. Moreover, the courts may resort to extrinsic aids in determining legislative intent. One avenue is the use of legislative history as an interpretive tool.
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> Gray [v. Administrative Director of the Court, 84 Hawai'i 138, 148, 931 P.2d 580, (1997)] (quoting State v. Toyomura, 80 Hawai'i 8, 18-19, 904 P.2d 893, 903-04 (1995)) (brackets and ellipsis points in original) (footnote omitted). This court may also consider "[t]he reason and spirit of the law, and the cause which induced the legislature to enact it . . . to discover its true meaning." HRS § 1-15(2) (1993). "Laws in pari materia, or upon the same subject matter, shall be construed with reference to each other. What is clear in one statute may be called upon in aid to explain what is doubtful in another." HRS § 1-16 (1993).
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> State v. Kotis, 91 Hawai'i 319, 327, 984 P.2d 78, 86 (1999) (quoting State v. Dudoit, 90 Hawai'i 262, 266, 978 P.2d 700, 704 (1999) (quoting State v. Stocker, 90 Hawai'i 85, 90-91, 976 P.2d 399, 404-05 (1999) (quoting Ho v. Leftwich, 88 Hawai'i 251, 256-57, 965 P.2d 793, 798-99 (1998) (quoting Korean Buddhist Dae Won Sa Temple v. Sullivan, 87 Hawai'i 217, 229-30, 953 P.2d 1315, 1327-28 (1998))))) (some brackets and ellipses points added and some in original).

State v. Rauch, 94 Hawai'i 315, 322-23, 13 P.3d 324, 331-32 (2000).

B. Stare decisis

With regards to overruling a previous decision of this court,

> we do not lightly disregard precedent; we subscribe to the view that great consideration should always be accorded precedent, especially one of long standing and general acceptance. Yet, it does not necessarily follow that a rule established by precedent is infallible. If unintended injury would result by following the previous decision, corrective action is in order; for we cannot be unmindful of the lessons furnished by our own consciousness, as well as by judicial history, of the liability to error and the advantages of review. As this court has long recognized, we not only have the right but are entrusted with a duty to examine the former decisions of this court and, when reconciliation is impossible, to discard our former errors.

Francis v. Lee Enters., Inc., 89 Hawai'i 234, 236, 971 P.2d 707, 709 (1999) (internal citations, quotations, and bracket omitted); see also State v. Jenkins, 93 Hawai'i 87, 111-12, 997 P.2d 13, 37-38 (2000) (citing Francis, supra); Parke v. Parke, 25 Haw. 397, 401 (1920) ("It is generally better to establish a new rule than to follow a bad precedent.").

III. DISCUSSION

A. Jumila and HRS § 134-6(a)

The State makes two primary arguments in support of its request that we overrule our previous holding in Jumila that a defendant cannot be convicted of both HRS § 134-6(a) and the separate felony. The State asserts that the legislative history of a subsequent amendment to HRS § 134-6(a) clarifies that the legislature indeed intended to permit convictions of both offenses when it enacted HRS § 134-6(a). The State also claims that, in Jumila, this court considered only a portion of the legislative history of HRS § 134-6(a) when we concluded that the

statute did not clearly indicate legislative intent to allow for conviction of both offenses.

Having considered the State's arguments, we agree that a defendant can be convicted of both HRS § 134-6(a) and the separate felony. We begin by reviewing our reasoning in Jumila.

This court's holding in Jumila was premised upon our conclusion that the separate felony was an included offense of HRS § 134-6(a). See Jumila, 87 Hawai'i at 3, 950 P.2d at 1203. An included offense is defined as one that is "established by proof of the same or less than all the facts required to establish the commission of the [greater] offense[.]" HRS § 701-109(4)(a).[3] We pointed out in Jumila that, "by virtue of the statutory definition of HRS § 134-6(a), the felony underlying an HRS § 134-6(a) charge will always be 'established by proof of the same or less than all the facts required to establish the commission of the' HRS § 134-6(a) offense." Jumila, 87 Hawai'i at 3, 950 P.2d at 1203. Consequently, we reasoned that "the felony underlying an HRS § 134-6(a) offense is, as a matter of law, an included offense of the HRS § 134-6(a) offense." Id.

After establishing that the separate felony was an included offense of HRS § 134-6(a), we noted that, pursuant to

[3] HRS §§ 701-109(4)(b) and (c), which establish additional definitions of an included offense, are not germane here.

HRS § 701-109(1)(a),[4] a defendant may not be convicted of more than one offense if one of those offenses is included within another. Id. We acknowledged that "the legislature could, if it desired, create an exception to the statutory prohibition set forth in HRS § 701-109[,]" but concluded the legislature had not clearly done so when it enacted HRS § 134-6(a). Jumila, 87 Hawai'i at 4-5, 950 P.2d at 1204-05. Therefore, in order to resolve the apparent conflict between HRS § 701-109(1)(a) and Jumila's conviction for both HRS § 134-6(a) and the separate felony, we held that the lesser grade offense should be reversed. See Jumila, 87 Hawai'i at 4, 950 P.2d at 1204.

The basis for our conclusion that the legislature had not clearly expressed its intent to allow a conviction for both offenses was that we "found no indication[] in the language of HRS § 134-6(a) or the legislative history preceding its original enactment in 1990 to suggest" such intent. Jumila, 87 Hawai'i at 5, 950 P.2d at 1205. In this appeal, the State points to legislative history of a 1993 amendment to the statute -- which established the version at issue in this case -- and suggests that the legislature was aware that persons were being convicted

[4] HRS § 701-109(1)(a) provides in relevant part:

> When the same conduct of a defendant may establish an element of more than one offense, the defendant may be prosecuted for each offense of which such conduct is an element. The defendant may not, however, be convicted of more than one offense if . . . [o]ne offense is included in the other, as defined in [HRS § 701-109(4).]

of both offenses and approved of the practice. Moreover, the State urges that we may consider the subsequent legislative history of the 1999 amendment to the statute to ascertain the legislature's earlier intent in enacting HRS § 134-6(a). We now turn to these arguments.

1. **1993 Amendment to HRS § 134-6(a)**

Preliminarily, we note that HRS § 134-6(a) is substantively the product of two legislative acts -- the original enactment in 1990 and an amendment to the statute in 1993. See 1990 Haw. Sess. L. Act 195, § 2 at 422; 1993 Haw. Sess. L. Act 239, § 1 at 418. The language of HRS § 134-6(a) at issue in Jumila -- the language that existed as a result of the 1993 amendment to the statute -- is the same language at issue in this case.[5] The statute as originally enacted in 1990 read as follows:

> [i]t shall be unlawful for a person to knowingly possess or intentionally use or threaten to use a firearm while engaged in the commission of a felony, whether the firearm was loaded or not, and whether operable or not.

1990 Haw. Sess. L. Act 195, § 2 at 422 (codified at HRS § 134-6(a) (Supp. 1991)). In addition, section 2 of Act 195 specified that

[5] Although the text of Jumila refers to HRS § 134-6(a) (Supp. 1996), see Jumila, 87 Hawai'i at 2, 950 P.2d at 1202, the version of the statute cited in Jumila is not different from HRS § 134-6(a) (1993), under which Brantley was convicted.

> [a]ny person violating this section by possessing, using or threatening to use a firearm while engaged in the commission of a felony shall be guilty of a class A felony.

Id. (subsequently codified at HRS § 134-6(e) (1993)).

In 1993, the legislature amended HRS § 134-6(a). After the amendment, HRS 134-6(a) appeared as follows (bracketed material was deleted from the 1990 version; underscored material was added by the 1993 amendment; bold emphasis in original):

> **[Possession] Carrying or use of firearm in the commission of a separate felony; place to keep firearms; loaded firearms; penalty**
> (a) It shall be unlawful for a person to knowingly [possess] carry on the person or have within the person's immediate control or intentionally use or threaten to use a firearm while engaged in the commission of a separate felony, whether the firearm was loaded or not, and whether operable or not[.]; provided that a person shall not be prosecuted under this subsection where the separate felony is:
> (1) A felony offense otherwise defined by this chapter;
> (2) The felony offense of reckless endangering in the first degree under section 707-713;
> (3) The felony offense of terroristic threatening in the first degree under section [707-716(1)(a)], [707-716(1)(b)], and [707-716(1)(d)]; or
> (4) The felony offenses of criminal property damage in the first degree under section 708-820 and criminal property damage in the second degree under section 708-821 and the firearm is the instrument or means by which the property damage is caused.

1993 Haw. Sess. L. Act 239, § 1 at 418. We acknowledge that the words of HRS § 134-6(a) do not expressly state that the legislature intended to abrogate the general prohibition in HRS § 701-109(1) against convictions of both HRS § 134-6(a) and the underlying, separate felony. However, the 1993 amendment illuminates an ambiguity in HRS § 134-6(a) with respect to this question. Because the statute is ambiguous, we turn to the legislative history for guidance. Moreover, if the legislature

did intend to permit both convictions, we can presume the legislature understood the effect that its actions would have with respect to HRS § 701-109(1). See generally Gardens at West Maui Vacation Club v. County of Maui, 90 Hawai'i 334, 341, 978 P.2d 772, 779 (1999) (court presumed legislature to have been aware of, and repealed by implication, earlier law contrary to new enactment).

For present purposes, the relevant substantive change in HRS § 134-6(a) as a result of the 1993 amendment was the addition of a list of several offenses (designated in subsections (a)(1) through (a)(4)), for which prosecution under the statute was prohibited if the separate felony was one of the designated offenses. See HRS § 134-6(a), supra at 10. The legislative rationale for prohibiting a conviction under the statute, when the underlying felony was among the small group of those designated, supports our interpretation that the legislature intended to allow dual convictions whenever the separate felony was not one of the designated offenses.

The rationale for excluding the designated separate offenses from the purview of HRS § 134-6(a) was "to clarify that [HRS § 134-6] was not intended to apply to certain felonies which already have enhanced penalties for identical conduct." Hse. Stand. Comm. Rep. No. 472, in 1993 House Journal, at 1163. Therefore, the 1993 amendment specifically prohibited prosecution

under HRS § 134-6(a) when the separate felony was one of the "certain felonies." The Senate Judiciary Committee Majority report on the amendment states:

> According to the Public Defender, this bill will correct the overreaching effect of section 134-6, which allows the prosecutor to apply this section to offenses that already have enhanced penalties for the use of a firearm, such as terroristic threatening and reckless endangering, and to possessory gun offenses -- a result not contemplated by the Legislature at the time of the provision's enactment in 1990 (Act 195).
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> . . . .
>
> Your Committee finds that section 134-6(a) established a class A felony for the possession, use, or threatened use of a firearm in the commission of a felony. Creation of this offense was intended to recognize and deter the heightened danger presented when a firearm is involved in the commission of a felony such as burglary.
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> Presently, an offender who uses a firearm in the commission of a felony can be charged with, in addition to the underlying offense, a class A felony under section 134-6(a) and therefore be subject to an enhanced penalty.
>
> However, your Committee finds that section 134-6(a) was not intended to permit charging of a separate felony for use of a firearm where the underlying felony involves a firearm and is classified as a felony for that reason alone. Otherwise, the involvement of a single firearm would, in effect, be counted twice: once in the definition of the underlying felony and a second time in defining the separate felony.

Sen. Stand. Comm. Rep. No. 1217, in 1993 Senate Journal, at 1210 (emphases added). Finally, the Conference Committee report on the 1993 amendment also reiterates that:

> The purpose of this bill is to amend [HRS § 134-6] to clarify that this section was not intended to apply to certain felonies, that already have enhanced penalties for identical conduct.

Conf. Comm. Rep. No. 12, 1993 Senate Journal, at 745 (emphasis added).

In our view, the foregoing history is consistent with an interpretation of HRS § 134-6(a) that allows for additional prosecution and conviction under the statute whenever the underlying felony is any felony other than those for which prosecution is specifically excluded in the statute. As the senate report indicates in referring to the testimony of the Public Defender and the "overreaching" effect of HRS § 134-6(a), the legislature was aware that individuals were being charged with both HRS § 134-6(a) and the separate felony. See Sen. Stand. Comm. Rep. No. 1217, in 1993 Senate Journal, at 1210. Moreover, the statement in the report that "[p]resently, an offender who uses a firearm in the commission of a felony can be charged with, in addition to the underlying offense, a class A felony under HRS § 134-6(a) and therefore be subject to an enhanced penalty" further illustrates the legislature's awareness of the issue.[6] Id. (emphasis added). Yet the legislature chose to exclude from such dual prosecution and conviction only a certain category of limited offenses where the separate felony itself required proof of firearm involvement or commonly involved the use of a firearm.[7] The fact that, as the report states, the

[6] The understanding that both convictions were permitted would also explain the 1993 addition of the adjective "separate" when referring to the "separate" underlying felony in the title and text of the statute. See 1993 Haw. Sess. L. Act 239, § 1 at 418.

[7] Although not all of the designated underlying felonies for which separate conviction is prohibited involve the use of a firearm, the legislative reports indicate that the legislature was considering scenarios

(continued...)

legislature had "not contemplated" the "overreaching effect" that persons might be convicted of both HRS § 134-6(a) and a separate felony, where the separate felony itself required proof of firearm involvement, implies that the legislature was contemplating that persons would be convicted of both HRS § 134-6(a) and the separate felony where the separate felony was one in which proof of firearm involvement was not required. Viewed in this context, the legislative intent becomes clear: when the legislature chose to exclude from consideration for dual prosecution and conviction only those offenses listed in subsections (1) through (4) of the statute, it intended to continue to allow dual prosecution and conviction in other contexts.

Moreover, we note that the senate standing committee report contains one additional provision that emphasizes the legislative intent to allow for dual convictions. Referring to the 1993 amendment to HRS § 134-6(a), the report states that

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[7](...continued)
whereby the use of a firearm commonly constitutes an element establishing the underlying felony. For example, the offenses listed that do not specifically include a firearm as an element constituting such offense include first degree reckless endangering in violation of HRS § 707-713 (1993), which requires either conduct involving "widely dangerous means" or the intentional firing of a firearm and terroristic threatening in the first degree in violation of HRS §§ 707-716(1)(a), (b), or (d) (1993), which involve, respectively, the terroristic threatening of one individual on more than one occasion, or more than one individual on one occasion in a common scheme, or with the use of a dangerous instrument. These offenses, as do all of the other designated offenses which expressly contain a "firearm" element, commonly involve firearm use.

> [a] similar measure was passed by the Legislature in 1992 but was vetoed by the Governor. The Governor was concerned with terroristic threatening with a firearm against a public servant being excluded from the designation as a class A felony . . . . Your Committee finds that this bill addresses the concerns expressed by the Governor in 1992.

Sen. Stand. Comm. Rep. No. 1217, in 1993 Senate Journal, at 1210. The report refers to the fact that one manner in which first degree terroristic threatening can be committed is by making terroristic threats against a public servant. See id. (referring to terroristic threatening under HRS § 707-716(1)(c)). In spite of the fact that other forms of first degree terroristic threatening were included in the list of designated separate felonies for which a defendant could not be prosecuted under HRS § 134-6(a), this particular form of terroristic threatening was omitted from the designated list. That is, the legislature decided to allow dual prosecution and conviction under HRS § 134-6(a) when the separate felony was first degree terroristic threatening of a public servant, in violation of HRS § 707-716(1)(c), but not allow dual prosecution and conviction when the separate felony was of other forms of first degree terroristic threatening, in violation of HRS §§ 707-716(1)(a), (b), or (d). This decision was made in response to the Governor's 1992 veto of the bill that did not contain this distinction and further evinces the legislature's knowledge of the fact that convictions of both offenses occurred and its intent to continue allowing the practice in circumstances not

specifically excluded in the statute. See Sen. Stand. Comm. Rep. No. 1217, in 1993 Senate Journal, at 1210.

Considering together, then, the language of the statute and the legislative understanding embedded in the 1993 amendments that conviction of both offenses was permitted, we are convinced that the legislature intended to permit convictions of both HRS § 134-6(a) and the separate felony at the time of Brantley's conviction. Accordingly, we overrule our holding in Jumila that a defendant cannot be convicted of both HRS § 134-6(a) and the separate felony, except of course, as provided in the statute itself.[8]

2. **1999 Amendment to HRS § 134-6**

In light of our decision to overrule Jumila, we need not consider, as the State urges, whether the subsequent legislative history of the 1999 amendment to the statute would shed further light on the legislature's earlier intent in enacting HRS § 134-6(a).

B. Retroactive Application of Jumila

Notwithstanding our decision to overrule Jumila, we review Brantley's arguments to ensure that he was not prejudiced by the circuit court's decision. Brantley argues that the

[8] We agree with Justice Levinson's concurring opinion that the United States and Hawai'i Constitutions forbid "multiple punishments for the same offense" -- i.e., conviction of more than one offense when one offense is included within another, unless there is a clear legislative intent to the contrary. Our decision rests on the premise that such intent exists in this case.

circuit court erred in denying his motion because there is no question that Jumila should have been applied retroactively to him based upon the fact that the appellant in Jumila, like Brantley, also sought "retroactive" relief via a HRPP Rule 35 petition. Brantley further contends that the circuit court should not have considered the effect of the 1999 legislation on his case, nor delayed ruling on his motion to do so. Finally, Brantley contends that another section of the 1999 amendment to HRS § 134-6(a) expressly prohibits his conviction of both offenses.

In light of our holding today, we need not address the circuit court's retroactivity analysis because we affirm its order on other grounds. See Taylor-Rice v. State, 91 Hawai'i 60, 73, 979 P.2d 1086, 1099 (1999) ("[T]his court may affirm a judgment of the trial court on any ground in the record which supports affirmance."); State v. Taniguchi, 72 Haw. 235, 240, 815 P.2d 24, 26 (1991) ("[W]here the decision below is correct[,] it must be affirmed by the appellate court[.]"). Moreover, our decision today effectively precludes "retroactive" application of Jumila in collateral proceedings because our decision is binding on this and all other collateral petitions addressing this issue that are currently pending or on direct review. See State v. Jackson, 81 Hawai'i 39, 51, 912 P.2d 71, 83 (1996) (Where a new rule of law is applied to the appellant in the case, "rather than

limiting its application to future appeals, 'persuasive federal authority would suggest that we would be obligated to apply the same rule to all other criminal proceedings currently pending in the court system.'") (citing State v. Kekona, 77 Hawai'i 403, 411 n.3, 886 P.2d 740, 748 n.3 (1994) (Levinson, J., concurring and dissenting) (citing Powell v. Nevada, 511 U.S. 79, 84 (1994))).

Finally, we reject Brantley's contention that section 2 of the 1999 amendment to HRS § 134-6(a) mandates that his conviction be reversed. As discussed previously, section 1 of the 1999 amendment to HRS § 134-6(a) expressly stated that dual convictions are permitted. Section 2 of the 1999 amendment states that

> [t]his Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

1999 Haw. Sess. L. Act 12, § 2 at 12. Brantley argues that this language indicates that the legislature expressly intended that the 1999 amendment to the law not be applied retroactively. We agree. However, the 1999 amendment is inapposite to Brantley's case because he was convicted under the 1993 version of the law and sought relief pursuant to Jumila; he was not convicted under the law as it stood after the 1999 amendment. Because we overrule Jumila, the relief Brantley seeks is not available. Given our conclusion today that the legislature intended all along to permit dual convictions and amended the law in 1999 in order to address our contrary decision in Jumila, we do not

believe, as Brantley urges, that by enacting section 2, the legislature intended to expressly disallow all dual convictions for the time period prior to the 1999 amendment, and then to allow the contrary practice of permitting dual convictions after the amendment. Rather, we think that section 2 was merely a statement that the newly-enacted 1999 amendment to HRS § 134-6(a) should not be applied retroactively.

IV. CONCLUSION

Based on the foregoing, we overrule our holding in State v. Jumila, 87 Hawai‘i 1, 950 P.2d 1201 (1998), that a defendant cannot be convicted of both HRS § 134-6(a) and its separate felony and affirm the order of the circuit court denying Brantley's HRPP Rule 35 motion.

On the briefs:

Kyle B. Coffman, for
defendant-appellant/
movant-appellant

Richard K. Minatoya,
Deputy Prosecuting Attorney,
for plaintiff-appellee/
respondent-appellee