

NO. 28009

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
BOB EMCH, Defendant-Appellant

E.M. RIMANDO
CLERK APPELLATE COURTS
STATE OF HAWAII

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 05-1-0335)

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Watanabe and Foley, JJ.)

Defendant-Appellant Bob Emch (Emch) appeals from the Order Denying Motion to Correct Illegal Sentence filed on May 31, 2006 in the Circuit Court of the First Circuit (circuit court).^{1/}

On February 23, 2005, the State of Hawaii (State) charged Emch with one count of Burglary in the First Degree (a class B felony with a mandatory minimum term of imprisonment of ten years), in violation of Hawaii Revised Statutes (HRS) § 708-810(1)(c) (1993). Emch pled guilty to the charge on August 1, 2005. On September 9, 2005, the State filed a Motion for Extended Term of Imprisonment (Extend Motion). The State classified Emch as a "persistent offender" within the meaning of HRS § 706-662(1) (Supp. 2005) and sought to extend Emch's term of imprisonment to twenty years, pursuant to HRS § 706-661 (Supp. 2005). The State also filed a Motion for Sentencing of Repeat Offender (Repeat Motion), pursuant to HRS § 706-606.5 (1993 & Supp. 2005).

^{1/} The Honorable Dexter D. Del Rosario presided.

The circuit court held a hearing on the State's motions on November 2, 2005. The State provided to the circuit court evidence of Emch's five prior convictions, all for Burglary in the First Degree (the same as the current offense). The circuit court granted the State's Extend Motion and increased Emch's term of imprisonment from ten to twenty years. The circuit court also granted the State's Repeat Motion, but reduced the mandatory minimum term of imprisonment from ten to six years due to the mitigating circumstance of Emch's taking responsibility by pleading guilty. The circuit court filed its Judgment on November 2, 2005.

Emch filed his Motion to Correct Illegal Sentence on February 1, 2006. After a hearing, the circuit court denied Emch's motion and filed its order on May 31, 2006. Emch timely appealed.

On appeal, Emch argues that the circuit court's extended sentence under HRS § 706-662(1) must be reversed because it imposed on Emch's constitutional rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, as explicated in Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348 (2000), and its progeny.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues as raised by the parties, we conclude that the circuit court did not abuse its discretion in sentencing Emch to an extended term of imprisonment. HRS §§ 706-661 and 706-606.5; State v. Rivera, 106 Hawai'i 146, 102 P.3d 1044 (2004); Barnett v. State, 91 Hawai'i 20, 26, 979 P.2d 1046, 1052 (1999); State v. Gaylord, 78 Hawai'i 127, 144, 890 P.2d 1167, 1184 (1995); State v. Kumukau, 71 Haw. 218, 227-28, 787 P.2d 682, 688 (1990).

Therefore,

IT IS HEREBY ORDERED that the Order Denying Motion to Correct Illegal Sentence filed on May 31, 2006 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, September 27, 2007.

On the briefs:

Phyllis J. Hironaka,
Deputy Public Defender,
for Defendant-Appellant.

Chief Judge

Stephen K. Tsushima,
Deputy Prosecuting Attorney,
City and County of Honolulu,
Plaintiff-Appellee.

Associate Judge

Associate Judge