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NO. CAAP-10-0000078

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
LYNN MARIE DIONISE, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CR. NO. 08-1-0293)

SUMMARY DISPOSITION ORDER

(By: Nakamura, Chief Judge, Leonard and Ginoza, JJ.)

Defendant-Appellant Lynn Marie Dionise (Dionise) appeals from the Judgment of Conviction and Sentence entered on August 12, 2010, by the Circuit Court of the Third Circuit (Circuit Court),^{1/} after Dionise entered a guilty plea on the charge of Promoting a Dangerous Drug in the Second Degree in violation of Hawaii Revised Statutes (HRS) § 712-1242(1)(b). Dionise was sentenced to ten (10) years of incarceration to be served "consecutively to any other sentence that defendant may be serving."

On appeal, Dionise contends that: (1) the Circuit Court failed to comply with State v. Hussein, 122 Hawai'i 495, 229 P.3d 313 (2010), and (2) Dionise's consecutive sentence was excessive under the circumstances.

^{1/} The Honorable Glenn S. Hara presided.

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 raised by the parties, we resolve Dionise's points of error as follows:

In Hussein, the Hawai'i Supreme Court unequivocally mandated that "after the filing date of the judgment herein, circuit courts must state on the record at the time of sentencing the reasons for imposing a consecutive sentence." Id. at 510, 229 P.3d at 328 (emphasis added). The State acknowledges that Dionise was sentenced after the judgment became effective in Hussein, but the Circuit Court did not comply with the supreme court's directive at the time of Dionise's sentencing. Instead, the State argues that the Circuit Court's later statement of reasons, at the time that Dionise's motion for reconsideration of sentence was denied, was sufficient to "ultimately comply" with the supreme court's mandate.

Under the circumstances of this case, we decline to, in effect, modify the supreme court's ruling to excuse the timing requirement, *i.e.*, that reasons for imposing a consecutive sentence be stated at the time of sentencing. Therefore, we vacate the consecutive portion of Dionise's sentence and remand for resentencing before another judge. Accordingly, we need not reach the other issue raised by Dionise.

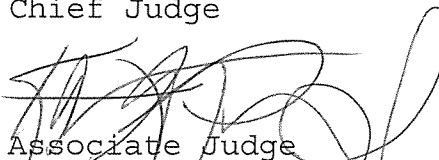
DATED: Honolulu, Hawai'i, October 19, 2012.


On the briefs:

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Chief Judge


Associate Judge


Associate Judge