

NO. 22850

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee

vs.

GREGORY PRENTICE BARNETT, Defendant-Appellant

APPEAL FROM THE SECOND CIRCUIT COURT
(CR. NO. 92-0196(2))

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama,
Ramil, and Acoba, JJ.)

Defendant-appellant Gregory Barnett (Barnett), pro se, timely appeals from the second circuit court's September 7, 1999 order denying Barnett's motion for correction or reduction of sentence under Hawai'i Rules of Penal Procedure (HRPP) Rule 35 (1999). Barnett contends that the circuit court erred in denying his Rule 35 motion because the court failed to articulate any reason for imposing the extended terms for which Barnett bargained. Specifically, Barnett contends that the circuit court failed to comply with Hawai'i Revised Statutes (HRS) § 706-662(4) (a) (1993) by not considering whether extended terms were necessary for the protection of the public before granting the extended terms.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the argument advanced and the issue raised by the party, we hold

that the circuit court did not err in denying Barnett's Rule 35 motion without considering the necessity of the extended terms for which Barnett bargained and received. In Barnett v. State, 91 Hawai'i 20, 979 P.2d 1046 (1999), this court decided on the merits the argument advanced by Barnett in his Rule 35 motion and in this appeal. The law of the case doctrine prevents Barnett from successfully reopening that issue here and obtaining sentence relief under Rule 35. Tabieros v. Clark Equip. Co., 85 Hawai'i 336, 352 n. 8, 944 P.2d 1279, 1295 n. 8 (1997).

Because this court previously decided the argument advanced by Barnett in his Rule 35 motion, the circuit court did not plainly and manifestly abuse its discretion in denying the Rule 35 motion without considering whether the extended terms he received were necessary to protect the public, or articulating any other specific reason for imposing the extended terms. Therefore,

IT IS HEREBY ORDERED that the September 7, 1999 order denying Barnett's Rule 35 motion from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, October 26, 2000.

On the briefs:

Gregory Barnett,
defendant-appellant
pro se

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