IN THE SUPREME COURT OF THE STATE OF HAWAI I

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GREGORY K. WILLIAMSON, Respondent-Petitioner-Appellant

vs.

HAWAI I PAROLING AUTHORITY, Petitioner-Respondent-Appellee

NO. 22882

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(S.P. NO. 99-0061) (CR. NOS. 93-1368 and 97-1865))

NOVEMBER 29, 2001

MOON, C.J., NAKAYAMA, AND RAMIL, JJ., AND
DISSENTING OPINION OF ACOBA, J., WITH WHOM LEVINSON, J., JOINS

OPINION OF THE COURT BY NAKAYAMA, J.

Petitioner-respondent-appellee Hawai i Paroling Authority (HPA) applies to this court for a writ of certiorari to review the opinion of the Intermediate Court of Appeals (ICA) in Williamson v. Hawai i Paroling Authority, No. 22882 (Haw. Ct. App. Nov. 22, 2000) [hereinafter, the ICA s opinion [1]], vacating the circuit court s judgment dismissing the Hawai i Rules of Penal Procedure (HRPP) Rule 40 petition of respondent-petitioner-appellant Gregory Williamson. In its application for certiorari, the HPA argues that the ICA erred when it held that a prisoner has a statutory right to a minimum term of imprisonment that is shorter than the maximum possible sentence. We hold that

[1] The ICA amended its opinion on November 30, 2000. All references to the ICA s opinion refer to the opinion as amended.

neither Chapter 706 nor Chapter 353 of the Hawai i Revised Statutes (HRS) prohibit the HPA from setting a prisoner s minimum term at a period equal to his or her maximum sentence. Therefore, we reverse the ICA s opinion.

I. BACKGROUND

A. Factual and procedural background

Williamson was convicted of one count of assault in the second degree, in violation of HRS § 707-711 (1993), and one count of burglary in the second degree, in violation of HRS § 708-811 (1993). On January 12, 1998, Williamson was sentenced to two concurrent terms of five years imprisonment. After a hearing pursuant to HRS § 706-669 (1993 & Supp. 1998), the HPA set Williamson s minimum terms at five years.

On November 24, 1998, Williamson filed an HRPP Rule 40 petition for post-conviction relief. In his petition, Williamson argued that the HPA violated his right to be eligible for parole under HRS § 706-669 by setting his minimum term at the same length of time as his maximum sentence. However, on February 3, 1999, the circuit court ruled that Williamson s petition did not raise issues of illegality of judgment as described in HRPP Rule 40(a)(1) or illegality of restraint or custody described in HRPP Rule 40(a)(2) [2] and ordered that

[2] HRPP Rule 40(a) states in pertinent part:

> The post-conviction proceeding established by this rule shall encompass all common law and statutory procedures for

(continued...)

Williamson s petition be forwarded to the court clerk to be processed as a civil complaint pursuant to HRPP Rule 40(c)(3).[3]

The HPA was served with a summons on February 8, 1999 that required it to answer the petition within thirty days. Instead of filing an answer, on February 22, 1999, the HPA filed a motion to dismiss the petition, arguing that it was immune to Williamson s claims. On March 4, 1999, Williamson filed a motion to strike the HPA s motion to dismiss, arguing that the HPA s motion raised insufficient defenses and contained immaterial, impertinent, and/or scandalous matter. The circuit court denied Williamson s motion to strike and granted the HPA s motion to

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[2](...continued)

> the same purpose, including habeas corpus and coram nobis; provided that the foregoing shall not be construed to limit the availability of remedies in the trial court or on direct appeal. Said proceeding shall be applicable to judgments of conviction and to custody based on judgments of conviction, as follows:
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> > . . . .
> > (2) From custody. Any person may seek relief under the procedure set forth in this rule from custody based upon a judgment of conviction, on the following grounds:
> > > (i) that sentence was fully served;
> > > (ii) that parole or probation was unlawfully revoked; or
> > > (iii) any other ground making the custody, though not the judgment, illegal.

[3] HRPP Rule 40(c)(3) states:

> If a post-conviction petition alleges neither illegality of judgment nor illegality of post-conviction custody or restraint but instead alleges a cause of action based on a civil rights statute or other separate cause of action, the court shall treat the pleading as a civil complaint not governed by this rule. However, where a petition seeks relief of the nature provided by this rule and simultaneously pleads a separate claim or claims under a civil rights statute or other separate cause of action, the latter claim or claims shall be ordered transferred by the court for disposition under the civil rules.

dismiss on July 2, 1999. A judgment in a civil case was entered in the HPA s favor on September 20, 1999. Williamson timely appealed.

B. The ICA s opinion

On appeal, Williamson argued that the circuit court erred in ordering that his HRPP Rule 40 petition be processed as a civil complaint and in granting the HPA s motion to dismiss the petition. Williamson argued that he had alleged illegal restraint or custody based on the HPA setting his minimum term in violation of his right to be eligible for parole under HRS § 706-669(1) (1993) and that, because the HPA violated his statutory right to be eligible for parole, the court should not have dismissed his petition.

The ICA issued a published opinion on November 22, 2000. Relying on Turner v. Hawai i Paroling Authority, 93 Hawai i 298, 1 P.3d 768 (App. 2000) (holding that an HRPP petition is the appropriate means to challenge an HPA decision denying parole), the ICA held that [an HRPP] Rule 40 petition is an appropriate means for an inmate to challenge the minimum term of imprisonment set by the HPA.

The ICA further held that the circuit court erred in granting the HPA s motion to dismiss because every inmate who is not sentenced to life imprisonment without the possibility of parole has a statutory right to have his or her minimum term set

at a period less than his or her maximum sentence. The ICA stated that:

> [HRS §] 706-669 states a prisoner shall become eligible for parole after serving his minimum term of imprisonment. [HRS §] 706-670(1) . . . states a person sentenced to an indeterminate term of imprisonment shall receive an initial parole hearing at least one month before the expiration of the minimum term of imprisonment. [HRS §] 353-62(a)(2) directs the HPA to consider for parole all committed persons, except in cases where the penalty of life imprisonment without parole has been imposed. . . . And finally, [HRS] § 353-64 provides that any committed person except those sentenced to life imprisonment without parole shall be subject to parole.

ICA s opinion at 8-9. The ICA stated that [t]ogether these statutory provisions make it clear that every inmate sentenced to an indeterminate sentence is entitled to a parole hearing. Id. at 8. The ICA further held that:

> By setting the same minimum term of imprisonment as the maximum term of imprisonment, the HPA has denied Williamson a meaningful parole hearing before his minimum sentences expire. Under HRS § 706-670(1), Williamson would still be entitled to a parole hearing at least one month before his minimum sentence expires, but he could not be placed on parole unless the HPA reduced his minimum terms of imprisonment. Section 706-669(5) (Supp. 1999) states that the HPA in its discretion may reduce the minimum term of imprisonment. Section 706-669(5) does not contemplate minimum terms being the same as maximum terms because the HPA would then have no discretion but to reduce a minimum term of imprisonment to allow an inmate to have a meaningful parole hearing.

Id. at 9-10 (emphasis in original). Finally, the ICA held that [a] reasonable period of time should intervene between such minimum and maximum sentences. Id. at 10 (quoting Territory v. Lake, 26 Haw. 764, 771-72 (1923)).

Based on these principles, the ICA vacated the circuit court s judgment and remanded the case to the circuit court with instructions to grant Williamson s HRPP Rule 40 petition and to

direct the HPA to reduce Williamson s minimum term such that there would be a reasonable period of time between his minimum and maximum terms. Id. at 10.

The HPA filed a timely application for a writ of certiorari on December 22, 2000.[4] In its application, the HPA argued that, based on the legislative history of HRS § 706-669 and the Hawai i Penal Code, the ICA erred in holding that prisoners are entitled, as a per se matter, to minimum terms that are shorter than their maximum sentences.

II. DISCUSSION

A. Standard of review

Whether the HPA has the authority to set a prisoner s minimum term of imprisonment at a period equal to his or her maximum sentence is a question of statutory interpretation.

> [T]he interpretation of a statute . . . is a question of law reviewable de novo. . . . [State v.] Arceo, 84 Hawai i [1,] 10, 928 P.2d [843,] 852 [(1996)] . . . (quoting State v. Camara, 81 Hawai i 324, 329, 916 P.2d 1225, 1230 (1996) (citations omitted)). See also State v. Toyomura, 80 Hawai i 8, 18, 904 P.2d 893, 903 (1995); State v. Higa, 79 Hawai i 1, 3, 897 P.2d 928, 930, . . . (1995); State v. Nakata, 76 Hawai i 360, 365, 878 P.2d 699, 704, . . . (1994). . . .

Gray v. Administrative Director of the Court, 84 Hawai i 138, 144, 931 P.2d 580, 586 (1997) (some brackets added and

[4] The Office of the Public Defender (OPD) filed an amended brief of amicus curiae (ABAC) on January 19, 2001. OPD admitted that there is no express statutory provision prohibiting the HPA from setting minimum terms that are the same as prisoners maximum sentences. ABAC at 2. However, OPD argued that there is an ambiguity as to whether the HPA has the authority to set minimum terms in this manner. Id. It argued that the ICA was correct in its resolution of this ambiguity, based upon the legislative history of the relevant statutes and the case law regarding indeterminate sentencing. Id. at 2-3.

> some in original). See also State v. Soto, 84 Hawai i 229, 236, 933 P.2d 66, 73 (1997). Furthermore, our statutory construction is guided by established rules:
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> > 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.
> >
> > 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, 84 Hawai i at 148, 931 P.2d at 590 (quoting . . . Toyomura, 80 Hawai i [at] 18-19, 904 P.2d [at] 903-04 . . .) (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).

State v. Valentine, 93 Hawai i 199, 204-05, 998 P.2d 479, 484-85 (2000) (quoting State v. Kotis, 91 Hawai i 319, 327, 984 P.2d 78, 86 (1999)) (some citations omitted) (some alterations in original).

B. Neither the plain language nor the legislative history of HRS Chapters 353 and 706 prohibits the HPA from setting a prisoner s minimum term of imprisonment at a period equal to his or her maximum sentence.

At the outset, we note that the legislature created the HPA to be the central paroling authority for the State. HRS § 353-62(1) (1993). Pursuant to HRS § 706-669, the HPA is

charged with determining the minimum term of imprisonment a prisoner must serve before being eligible for parole.[5] The guidelines upon which these determinations are made are established by the HPA. HRS § 706-669(8) (1993). The legislature did not expressly provide a means to appeal HPA parole decisions.[6] The legislature apparently intended to grant the HPA broad discretion in establishing minimum terms. As noted in the Commentary on HRS § 706-669, the HPA has the exclusive authority to determine the minimum time which must be served before the prisoner will be eligible for parole. Further, there is no evidence in the legislative history of HRS § 706-669 (1993 & Supp. 2000) that indicates that the legislature intended to

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[5] HRS § 706-669 provides in pertinent part:

> (1) When a person has been sentenced to an indeterminate or an extended term of imprisonment, the Hawaii paroling authority shall, as soon as practicable but no later than six months after commitment to the custody of the director of the department of [public safety] hold a hearing, and on the basis of the hearing make an order fixing the minimum term of imprisonment to be served before the prisoner shall become eligible for parole.
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> (2) Before holding the hearing, the authority shall obtain a complete report regarding the prisoner s life before entering the institution and a full report of the prisoner s progress in the institution. The report shall be a complete personality evaluation for the purpose of determining the prisoner s degree of propensity toward criminal activity.
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> . . . .
>
> (8) The authority shall establish guidelines for the uniform determination of minimum sentences which shall take into account both the nature and degree of the offense of the prisoner and the prisoner s criminal history and character. The guidelines shall be public records and shall be made available to the prisoner and to the prosecuting attorney and other interested government agencies.

(Brackets in original.)

[6] However, under Turner, HPA decisions are subject to limited judicial review. See discussion infra section II.C.

prohibit the HPA from setting a prisoner s minimum term at a period equal to his or her maximum sentence.[7] We read the relevant statutes in this case with these principles in mind.

The ICA held that, when HRS §§ 353-62, 353-64, 706-669, and 706-770 are read in pari materia, they create a statutory right of every prisoner, who is not sentenced to life imprisonment without the possibility of parole, to be considered for parole in periodic parole hearings. We disagree with this

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[7] HRS § 706-669 was adopted in 1972, when the legislature enacted the Hawai i Penal Code, which was derived from the Model Penal Code (MPC). See 1972 Haw. Sess. L. Act 9, § 1 at 82-83; Conf. Comm. Rep. No. 1, in 1972 Senate Journal, at 734. The legislative history does not address the issue presented in this case. See Conf. Comm. Rep. No. 1, in 1972 Senate Journal, at 734; Conf. Comm. Rep. No. 2, in 1972 Senate Journal, at 742-43; Sen. Stand. Comm. Rep. No. 599, in 1971 Senate Journal, at 1074; Hse. Stand. Comm. Rep. No. 227, in 1971 House Journal, at 785. Neither do the subsequent amendments to HRS § 706-669 address this issue. See 1976 Haw. Sess. L. Act 92, § 8 at 148-49; 1988 Haw. Sess. L. Act 282, § 1 at 526-27; 1996 Haw. Sess. L. Act 4, § 1 at 5, Act 193, § 1 at 445-46.

The ICA s opinion states that the Commentary to HRS § 706-669 indicates that the section contemplates sentenced felons having the opportunity to be paroled, except for felons sentenced to life without the possibility of parole for murder. ICA s opinion at 7 n.2; see also Dissent at 11-12. Therefore, under this view, every prisoner, who is not sentenced to life imprisonment without the possibility of parole, is eligible for parole. We do not agree that the commentary to section 706-669 supports this proposition.

At the time the 706-669 Commentary was drafted, HRS § 706-606(a) enumerated the circumstances giving rise to the offense of murder in the first degree, which is subject to a mandatory sentence of life imprisonment without the possibility of parole. The comparable statute in the current version of the HRS is section 707-701(1). Compare HRS § 706-606(a) (Supp. 1972) with HRS § 707-701(1)(b) through (e) (1993). However, where the prisoner has been convicted of murder in the first degree, the sentencing court imposes a sentence of life without the possibility of parole. This is distinguishable from cases in which the HPA establishes a mandatory minimum term that renders the prisoner ineligible for parole. Where the sentencing court imposes a sentence of life imprisonment without the possibility of parole, the HPA does not have any discretion to take action with regard to the prisoner s parole status.

Similarly, we also reject the argument of amicus curiae OPD that Territory v. Lake, 26 Haw. 764 (1923), addressed the exact issue presented in the instant case[.] ABAC at 5. Lake and the other cases cited by OPD pre-date the Hawai i Penal Code and were decided under sentencing and parole schemes that were markedly different from those presently in force.

reading of Chapters 353 and 706. The relevant sections can be reconciled without limiting the HPA s authority in this manner.

1. HRS Chapter 353

HRS § 353-62 (1993) describes the responsibilities and duties of the HPA. It states, in relevant part:

> (a) In addition to any other responsibility or duty prescribed by law for the Hawaii paroling authority, the paroling authority shall:
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> (1) Serve as the central paroling authority for the State;
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> (2) In selecting individuals for parole, consider for parole all committed persons, except in cases where the penalty of life imprisonment not subject to parole has been imposed, regardless of the nature of the offense committed;
>
> (3) Determine the time at which parole shall be granted to any eligible individual as that time at which maximum benefits of the correctional institutions to the individual have been reached and the element of risk to the community is minimal[.]

(Emphases added.)[8] There is no reference to the establishment of minimum terms in this section. Thus, the conduct of hearings on the establishment of minimum terms and the actual establishment of minimum terms are responsibilities and duties prescribed by law in addition to those set out in HRS § 353-62. They are not

[8] The bill adopting these provisions was introduced in 1975 and enacted in 1976. See 1975 Senate Journal at 23; 1976 Haw. Sess. L. Act 92, § 3 at 146. The purpose of the bill was to reconstitute the board of paroles and pardons in order to more effectively and efficiently achieve the dual and inseparable purposes of parole, the protection of society on the one hand and the rehabilitation of the offender on the other. Conf. Comm. Rep. No. 32-76, in 1976 Senate Journal, at 882. There is nothing in the legislative history indicating that, in adopting these provisions, the legislature intended to confer the right to periodic parole hearings upon all prisoners not sentenced to life imprisonment without the possibility of parole. See id.; Sen. Stand. Comm. Rep. No. 314, in 1975 Senate Journal, at 959-60; Hse. Stand. Comm. Rep. No. 695, in 1975 House Journal, at 1280. Neither is this issue addressed in the subsequent amendments to the statute. See 1987 Haw. Sess. L. Act 338, § 5 at 1108; 1988 Haw. Sess. L. Act 141, § 33 at 226-27.

governed by the general terms of HRS § 353-62. HRS § 706-669 is the sole statute governing the establishment of minimum terms, and it does not prohibit the HPA from setting a prisoner s minimum term at a period equal to his or her maximum sentence.

Further, allowing the HPA to set a prisoner s minimum term at a period equal to his or her maximum sentence is consistent with the terms of HRS § 353-62(a)(2) and (3) (1993). Subsection (a)(2) provides that the HPA shall consider for parole all persons, except those sentenced to life imprisonment without the possibility of parole. The establishment of a minimum term is part of the parole process and, in establishing the minimum, the HPA looks at a variety of factors including the prisoner s characteristics and the nature of the underlying offense. See State v. Bernades, 71 Haw. 485, 490, 795 P.2d 842, 845 (1990); HRS § 706-669(8) (1993). Thus, even where the HPA renders a prisoner effectively ineligible for parole by setting his minimum term at a period equal to his maximum sentence, the prisoner has been considered for parole.

Subsection (a)(3) refers to the determination of the time when parole is to be granted to any eligible individual. (Emphasis added.) Because the statute refers to eligible individuals, we believe that the legislature contemplated that some individuals may be rendered ineligible for parole by virtue of the prior consideration given them. Further,

subsection (a)(3) utilizes different language than subsection (a)(2), which refers to all committed persons, except in cases where the penalty of life imprisonment not subject to parole has been imposed[.] This implies that the class of persons who are ineligible for parole is different from the class of persons who were sentenced to life imprisonment without the possibility of parole. Thus, HRS § 353-62, while requiring the HPA to consider for parole all prisoners not sentenced to life imprisonment without the possibility of parole, does not prohibit the HPA from rendering a prisoner ineligible for parole by setting his or her minimum term at a period equal to his or her maximum sentence.

The ICA s opinion also relies upon HRS § 353-64 (1993), which states, in pertinent part: Any committed person . . . , except in cases where the penalty of life imprisonment not subject to parole has been imposed, shall be subject to parole in manner and form as set forth in this part[.] [9] (Emphasis added.)

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[9] The shall be subject to parole in the manner and form as set forth language was enacted in 1917. See 1917 Haw. Sess. L. Act 103, § 1 at 145. The Act stated that parole may be granted upon the completion of a prisoner s minimum sentence, less commutation, and that the intent, plan, and purpose of parole and commutation applied to all sentences, minimum or maximum. Id., § 2 at 145. The legislative history indicates that the legislature rejected a provision that would have required a felon to serve, in the absence of a statutory minimum sentence, at least one half of his sentence before being eligible for parole. See Hse. Stand. Comm. Rep. No. 297, in 1917 House Journal, at 638. However, the legislative history does not address the issue presented in this case. See id. at 637-38; Sen. Stand. Comm. Rep. No. 243, in 1917 Senate Journal, at 726. Neither do the subsequent amendments address this issue. See 1931 Haw. Sess. L. Act 126, § 1 at 116; 1955 Haw. Sess. L. Act 239, § 1 at 220-21; 1988 Haw. Sess. L. Act 147, § 1 at 247; 1993 Haw. Sess. L. Act 101, § 1 at 146, Act 201, § 1 at 307.

As discussed supra, the establishment of a minimum term of imprisonment is part of the parole process. Therefore, a prisoner who, after the appropriate hearing, has his or her minimum term set at a period equal to his or her maximum sentence has been subject to parole. HRS § 353-64 does not prohibit the HPA from setting a prisoner s minimum term at a period equal to his or her maximum sentence.

Further, assuming arguendo that HRS §§ 353-62 and 353-64 were irreconcilable with HRS § 706-669 with regard to this issue, we would still hold that the HPA currently has the authority to set a prisoner s minimum term at a period equal to his or her maximum sentence. It is a well established principle of statutory construction that, where a general statute and a specific statute conflict, the specific statute will be favored. See, e.g., State v. Kotis, 91 Hawai i 319, 330, 984 P.2d 78, 89 (1999) (quoting State v. Vallesteros, 84 Hawai i 295, 303, 933 P.2d 632, 640, reconsideration denied, 84 Hawai i 496, 936 P.2d 191 (1997) (citations and internal quotation signals omitted)). HRS §§ 353-62 and 353-64 are general provisions defining the authority and responsibilities of the HPA, whereas HRS § 706-669 is a specific provision regarding the establishment of minimum terms of imprisonment. Even assuming arguendo that HRS §§ 353-62 and 353-64 do require the HPA to give all prisoners not sentenced to life imprisonment without the possibility of parole a parole

hearing, these sections would conflict with HRS § 706-669, which imposes no such requirement. In fact, HRS § 706-669(4) (1993) states that the HPA in its discretion may, in any particular case and at any time, impose a special condition that the prisoner will not be considered for parole unless and until the prisoner has a record of continuous exemplary behavior. Thus, a prisoner upon whom such a condition has been imposed may never receive an initial parole hearing. The ICA s interpretation leaves no room for this possibility.[10] Further, the prohibition on setting minimum terms at periods equal to the applicable maximum sentences is inconsistent with the legislature s apparent intent to grant the HPA wide discretion in establishing minimum terms.

2. HRS Chapter 706

The ICA s opinion and the dissenting opinion also rely on the requirement in HRS § 706-670(1) (Supp. 2000) that a person sentenced to an indeterminate term receive an initial parole hearing at least one month before the expiration of his or her minimum term and that, if parole is not granted at that time, the person receive additional hearings at twelve-month intervals or

[10] The dissenting opinion argues that this special condition is the only circumstance under which a prisoner may be denied parole hearings. The dissent reads too much into this provision. HRS § 706-669(4) merely allows the HPA to determine that a prisoner will not be given a parole hearing, even if he or she has served the minimum term, unless he or she exhibits continuous exemplary behavior. Nothing in the terms of HRS § 706-669(4) imposes limitations upon the HPA s discretion in determining minimum terms.

less, until parole is granted or the maximum sentence is served. By virtue of the foregoing, the ICA held that a prisoner is entitled to a reasonable period of time between his or her minimum term and maximum sentence. ICA s opinion at 10. The dissent argues that the HPA has no discretion to deny such additional hearings. Dissent at 14. However, the legislative history of HRS § 706-670 (1993 & Supp. 2000)[11] is silent as to this issue, and, in our view, this section does not accord such a right.

We decline to interpret HRS § 706-670 such that its terms, which define the process for an initial parole hearing and subsequent hearings, render eligible for parole all persons not sentenced to life imprisonment without the possibility of parole. Under the formulation proposed by the ICA and the dissent, the HPA would be obligated to set each prisoner s minimum term such that he or she would receive at least two parole hearings. This is a significant restriction upon the HPA s otherwise broad discretion to establish minimum terms. Had the legislature intended to impose such a restriction, it presumably would have expressly done so. Further, the dissent acknowledges that HRS

[11] HRS § 706-670 was also enacted in 1972 with the adoption of the Hawai i Penal Code. See 1972 Haw. Sess. L. Act 9, § 1 at 83-84. However, the legislative history does not address the issue in the present case. See committee reports cited supra note 5. Neither do the subsequent amendments to this section address this issue. See 1976 Haw. Sess. L. Act 92, § 8 at 148-49; 1983 Haw. Sess. L. Act 30, § 1 at 34-35; 1984 Haw. Sess. L. Act 257, § 3 at 579-80; 1986 Haw. Sess. L. Act 314, § 47 at 614; 1988 Haw. Sess. L. Act 282, § 2 at 527; 1993 Haw. Sess. L. Act 101, § 2 at 146, Act 201, § 2 at 307-38; 1996 Haw. Sess. L. Act 4, § 1 at 445-46.

§ 706-670(1) does not compel the HPA to grant parole. Dissent at 15. Thus, where the HPA determines at the minimum term hearing that a prisoner s case does not warrant parole, it would be forced to grant subsequent parole hearings and deny parole each time.

We decline to give HRS § 706-670 such a strained interpretation that is contrary to the legislature s apparent intent to confer wide discretion upon the HPA. Instead, we interpret HRS § 706-670 to have a limited application that is consistent with the legislative intent for the HPA. Section 706-670 does not apply where the HPA has rendered the prisoner ineligible for parole, e.g. where the HPA has set the prisoner s minimum term at a period equal to the maximum sentence, or where the HPA has imposed the condition that he shall not be considered for parole until the prisoner exhibits exemplary behavior and he or she has not done so.

We are mindful of our duty to give effect to all parts of a statute whenever possible. See, e.g., In re Doe, 90 Hawai i 246, 250, 978 P.2d 684, 688 (1999) ([c]ourts are bound to give effect to all parts of a statute, and that no clause, sentence, or word shall be construed as superfluous, void, or insignificant if a construction can be legitimately found which will give force to and preserve all words of the statute (quotingState v. Kaakimaka, 84 Hawai i 280, 289-90, 933 P.2d 617, 626-27, (1997)

(some citations omitted))). Our interpretation of HRS § 706-670 does not run afoul of this principle. Our interpretation preserves the broad discretion of the HPA but does not render the statute superfluous, void, or insignificant; the statute still applies to all prisoners whose minimum terms, as determined by the HPA, render them eligible for parole. HRS § 706-670 still provides for periodic review of the prisoner s case where he or she is eligible for parole. See Commentary to HRS § 706-670.

In its application for a writ of certiorari, the HPA argues that, in adopting HRS § 706-669, the legislature must have intended to allow the HPA to set minimum terms that are equal to prisoners maximum sentence because this was also contemplated by the MPC. As noted, supra, the Hawai i Penal Code was modeled after the MPC. However, the HPA admits that, under the MPC scheme, a prisoner would serve a separate term of parole after the expiration of the maximum sentence and that the HRS Chapter 706 scheme is distinguishable because it requires an unconditional discharge upon the completion of a prisoner s maximum sentence. Compare Model Penal Code § 6.10(1) (1962)[12]

[12] MPC § 6.10(1) states:

> First Release of All Offenders on Parole. An offender sentenced to an indefinite term of imprisonment in excess of one year under Section 6.05, 6.06, 6.07, 6.09 or 7.06 shall be released conditionally on parole at or before the expiration of the maximum of such term, in accordance with Article 305.

with HRS § 706-670(5) (1993).[13] Because the MPC parole eligibility scheme is different from that of HRS Chapter 706, the MPC is not instructive in the interpretation of HRS § 706-669.

Based upon our review of the relevant statutes, we hold that their plain language does not prohibit the HPA from establishing a prisoner s minimum term at a period equal to his or her maximum sentence and that nothing in the legislative history supports such a restriction.[14]

C. Policy considerations do not support judicial adoption of this limitation on the HPA s authority.

Absent guidance from the plain statutory language, or, if the language is ambiguous, from the legislative history, we look to the relevant policy considerations behind them. Cf. State v. Eleneki, 92 Hawai i 562, 565-66, 993 P.2d 1191, 1194-95 (2000).

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[13] HRS § 706-670(5) states: Release upon expiration of maximum term. If the authority fixes no earlier release date, a prisoner s release shall become mandatory at the expiration of the prisoner s maximum term of imprisonment.

[14] Because it is possible to reasonably reconcile the applicable statutes based upon the plain language of the statutes, we decline to rely on extrinsic aids, such as dictionaries. See Voellmy v. Broderick, 91 Hawai i 125, 129, 980 P.2d 999, 1003 (App. 1999). The dissent relies primarily upon dictionary definitions of minimum and maximum to conclude that a minimum term cannot be equivalent to a maximum term. The distinction drawn by the dissent is not supported by the plain language of the relevant statutes or by the legislature s intent. The dissent acknowledges that parole is a fine-tuning of a sentencing decision. Dissent at 20 (quoting N.P. Cohen, The Law of Probation and Parole, § 1:19, at 1-28 (1999)). Considering the factors that the HPA considers in establishing a minimum term which cannot be considered by the sentencing court, it is certainly conceivable that there may be circumstances under which the HPA determines that a prisoner should not be eligible for parole. That being the case, there is no sound reason to categorically prohibit the HPA from setting a minium term at a period equal to the maximum sentence.

The legislature has stated that the dual and inseparable purposes of parole are the protection of society on the one hand and the rehabilitation of the offender on the other. [15] Conf. Comm. Rep. No. 32-76, in 1976 Senate Journal, at 882. The HPA is charged with the exclusive authority to determine the minimum time which must be served before the prisoner will be eligible for parole. Commentary to HRS § 706-669. The instant case presents the question whether it is necessary to restrict the HPA s authority by prohibiting it from setting prisoners minimum terms at periods equal to their maximum sentences.

As a policy matter, we believe that it is unnecessary to restrict the HPA s authority in this manner. HRS § 706-669 affords prisoners, inter alia, the following procedural protections: 1) reasonable notice of the hearing and the opportunity to be heard on the issue; HRS § 706-669(3) (1993); 2) the opportunity to consult with any persons the prisoner reasonably desires . . . ; HRS § 706-669(3)(a) (1993); 3) representation by, and the assistance of, counsel at the hearing,

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[15] The dissenting opinion argues that these functions provide support for the proposition that a minimum term cannot be set at a period equivalent to the maximum term. We disagree. There are many factors that the HPA must consider in establishing a prisoner s minimum term, including the nature and degree of the offense, his or her criminal history, and his or her character. See HRS § 706-669(8). Given these factors, it is certainly possible that the HPA, in its sound discretion, may determine that a particular case does not warrant parole because the protection of society outweighs the potential rehabilitative benefits of parole. Categorically prohibiting the HPA from setting minimum terms at periods equal to the maximum terms improperly emphasizes rehabilitation at the expense of protection.

and the appointment of counsel if he or she cannot afford to retain one; HRS § 706-669(3)(b), (c) (1993); 4) verbatim recording of the hearing, and the preservation of such recording; HRS § 706-669(6) (1993); and 5) availability of the HPA s guidelines for the uniform determination of minimum sentences; HRS § 706-669(8). Further, the HPA, in its discretion, may subsequently reduce a prisoner s minimum term. HRS § 706-669(5) (Supp. 2000). The procedural protections are adequate to safeguard prisoners rights and ensure that the HPA does not arbitrarily set minimum sentences.

In addition, in Turner, the ICA held that a prisoner may seek judicial review, through an HRPP Rule 40 petition, of the HPA s decision to deny parole. However, the scope of such review is limited. The ICA noted that other jurisdictions have recognized the need to preserve the parole board s discretion in granting or denying parole:

> Declaring that a district court cannot substitute its judgment on questions of parole for that of the parole board[,] [United States ex rel. O Connor v. MacDonald, 449 F. Supp. 291, 292 (N.D. Ill. 1978)], the United States district court limited its review to situations where [t]he decision of a state administrative agency is an arbitrary one when it is made without fair, solid, and substantial cause or reason; but it is not necessarily so because mistaken or even wrong. Id. (citing Grossmann v. Barney, 359 S.W.2d 475, 476 (Tex. Civ. App. 1962). The district court indicated review would be exercised to determine whether [the parole board] has followed the appropriate criteria, rational and consistent with the applicable statutes and that its decision is not arbitrary and capricious nor based on impermissible considerations. Id. (citing Zannino v. Arnold, 531 F.2d 687, 690 (3d Cir. 1976).
>
> Likewise, in Reider v. Commonwealth of Pennsylvania Bd. of Probation and Parole, 100 Pa. Cmwlth. 333, 514 A.2d 967 (1986), the Pennsylvania Court of Appeals held that a decision by the parole board denying parole was subject to

> limited judicial review. Id. at 972. Noting that denials of parole are wholly a matter of the [parole board s] discretion[,] id. at 970 (citing 61 Pennsylvania Consolidated Statutes § 331.21), the appellate court explained that it would be impossible for a court to properly evaluate a parole denial because of the many variables considered by the board, such as record facts, personal observations and the experience of the decision maker which leads to a predictive judgment as to what is best for both the inmate and the community. Id. at 971.

Turner, 93 Hawai i at 307-08, 1 P.3d at 777-78 (emphases added) (some citations omitted) (some alterations in original). Based on similar principles, the ICA held that Hawai i courts may review a decision denying parole in situations where the parole board has failed to exercise any discretion at all, or

> arbitrarily and capriciously abused its discretion so as to give rise to a due process violation or has otherwise violated any constitutional rights of the prisoner. Id. at 308, 1 P.3d at 778.

As stated earlier, the determination of a prisoner s minimum term is part of the parole process. Therefore, the same standards should apply to judicial review of both an HPA decision denying parole and an HPA decision establishing a minimum term. In both cases, judicial intervention is appropriate where the HPA has failed to exercise any discretion at all, acted arbitrarily and capriciously so as to give rise to a due process violation, or otherwise violated the prisoner s constitutional rights.[16]

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[16] We note the present case addresses only the issue whether the HPA has the statutory authority to set a prisoner s minimum term at period equal to his or her maximum sentence. Williamson does not argue that, in setting his minimum term, the HPA failed to exercise any discretion at all, acted

(continued...)

That being the case, there are sufficient protections of prisoners rights in the establishment of minimum terms; it is unnecessary to create judicially an additional restriction on the HPA s authority by prohibiting it from setting prisoners minimum terms at periods equal to their maximum sentences. Where the HPA conducts a hearing pursuant to HRS § 706-669 and, based upon its established guidelines, determines that a prisoner s minimum term shall be equal to his or her maximum term, the HPA does not abuse its discretion and does not violate the prisoner s due process rights.

Finally, we note that [p]arole is a matter of legislative grace, and the denial of it to certain offenders is within legislative discretion. State v. Kumukau, 71 Haw. 218, 227, 787 P.2d 682, 687 (1990) (quoting State v. Freitas, 61 Haw. 262, 270, 602 P.2d 914, 921 (1979)). As such, it was with the legislature s discretion to allow the HPA to deny parole to certain prisoners by setting their minimum terms at periods equal to their maximum sentences. Therefore, we assume that, if the legislature had intended to limit the HPA s discretion by prohibiting it from doing so, it would have enacted an express restriction. We will not read this limitation into the statutes. If the HPA s authority to establish minimum terms is to be

[16](...continued)
arbitrarily and capriciously resulting in a due process violation, or otherwise violated his constitutional rights.

limited in this manner, it is incumbent upon the legislature, not the appellate courts, to do so. Cf. Wyo. Stat. Ann. § 7-13-201 (Michie 1999) (stating that the minimum term shall not exceed ninety percent of the maximum sentence);[17] 42 Pa. Cons. Stat. § 9756(b) (1998) (stating that the minimum term shall not exceed one-half of the maximum sentence); Nev. Rev. Stat. § 193.130(1) (2000) (stating that the minimum term shall not exceed forty percent of the maximum sentence).[18] But cf. Duffy, 730 P.2d at

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[17] A prior version of this statute stated:

> When a convict is sentenced to the state penitentiary, otherwise than for life, for an offense or crime, the court imposing the sentence shall not fix a definite term of imprisonment, but shall establish a maximum and minimum term for which said convict shall be held in said prison. The maximum term shall not be longer than the longest term fixed by law for the punishment of the offense of which he was convicted, and the minimum term shall not be less than the shortest term fixed by law for the punishment of the offense of which he was convicted.

Duffy v. State, 730 P.2d 754, 756 (Wyo. 1986) (quoting Wyo. Stat. Ann. § 7-13-201 (1977)) (emphasis added), superceded by statute as stated in Ryan v. State, 988 P.2d 46, 64 (Wyo. 1999). In Duffy, the Wyoming Supreme Court stated:

> [T]here is nothing in the statute which requires any fixed period of time between the minimum and maximum, and this court would be interfering with an important legislative function if it undertook to establish such a period. We doubt that the legislature overlooked the obvious possibility that a judge might impose [a sentence in which the minimum and maximum differ by one day].

Id. A year after Duffy, the Wyoming legislature responded and changed the statute into its present form, which states that the minimum can be no more than ninety percent of the maximum. See Ryan, 988 P.2d at 64 (citing 1987 Wyo. Sess. Laws, Ch. 157). Similarly, we decline to read a limitation on the HPA s authority to set minimum terms into the statutes and rely upon the legislature to amend the statutes if necessary.

[18] These states differ from Hawai i in that the court, not the parole board, establishes the minimum sentences. Once the prisoner has completed his or her minimum term, less any deductions or commutations, the parole board considers him or her for parole. See Wyo. Stat. Ann. § 7-13-402(a) (1999); 61 Pa. Cons. Stat. § 331.21(a) (1999); Nev. Rev. Stat. § 193.130(1) (2000). Regardless of this difference, these statutes illustrate the principle that, if the authority to determine minimum sentences is to be limited, the proper place to do so is in a statute.

760 ([j]ust one court, Michigan, has, without statutory authority, created the range to be imposed between the minimum and maximum terms (quoting People v. Duffy, 67 Mich. App. 266, 240 N.W.2d 771, 773 (1976) (any sentence which provides for a minimum exceeding two-thirds of the maximum is improper as failing to comply with the indeterminate sentence act))).

Based on the foregoing, we hold that a prisoner does not have a statutory right to have his or her minimum term set at a period shorter than the maximum sentence.[19]

[19] We also reject the argument of amicus curiae OPD that the policy behind indeterminate sentencing supports the ICA s holding An indeterminate sentence is [a] sentence to imprisonment for the maximum period defined by law, subject to termination by the parole board or other agency at any time after service of the minimum period. . . . Black s Law Dictionary 771 (6th ed. 1990). Williamson s sentence was subject to termination by the HPA upon completion of his minimum term. Although the HPA may have set his minimum term at a period equal to his maximum sentence, it has the discretion to reduce his minimum term. Allowing the HPA the authority to set a minimum term that is the same as a prisoner s maximum sentence does not render the sentence a determinate sentence.

III. CONCLUSION

Therefore, we reverse the ICA s opinion. We also vacate the circuit court s September 20, 1999 judgment and remand the case to the circuit court with instructions to process Williamson s petition as an HRPP Rule 40 petition.

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