

*** NOT FOR PUBLICATION ***

NO. 25097

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

DELFREDO JAMES LLANES, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT
(FC-CR. NO. 01-1-361K)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Acoba, JJ.
and Circuit Judge August, assigned by reason of vacancy)

Defendant-appellant Delfredo James Llanes appeals from the judgment of the family court of the third circuit, the Honorable Joseph P. Florendo, Jr. presiding, convicting him of and sentencing him for abuse of a family or household member, in violation of Hawai'i Revised Statutes (HRS) § 709-906(1) (Supp. 2000).¹ On appeal, Llanes argues that the family court erred when it sentenced him to 190 days of imprisonment as a condition of probation because, pursuant to HRS § 706-624(2) (a) (1993),² he

¹ HRS § 709-906(1) provides:

It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member, or to refuse compliance with the lawful order of a police officer under subsection (4). The police, in investigating any complaint of abuse of a family or household member, upon request, may transport the abused person to a hospital or safe shelter.

For the purposes of this section, "family or household member" means spouses or reciprocal beneficiaries, former spouses or reciprocal beneficiaries, parents who have a child in common, parents, children, persons related by consanguinity, and persons jointly residing or formerly residing in the same dwelling unit.

² HRS § 706-624(2) (a) provides:

(2) Discretionary conditions. The court may provide, as further conditions of a sentence of probation, to the

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may not be sentenced to more than six months incarceration as a term or condition of probation.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and issues raised, we hold that the family court's sentence of 190 days' imprisonment as a condition of probation violates HRS § 706-624(2)(a), and, thus, is an illegal sentence. Although Llanes's attorney did not object to this sentence during the family court proceedings, an illegal sentence may be corrected at any time. See Hawai'i Rules of Penal Procedure (HRPP) Rule 35;³ State v. Ramela, 77 Hawai'i 394, 396, 885 P.2d 1135, 1137 (1994). Therefore,

IT IS HEREBY ORDERED that Llanes's sentence for abuse of family or household members is vacated and this case is remanded for resentencing.

DATED: Honolulu, Hawai'i, April 25, 2003.

On the briefs:

Jon N. Ikenaga, Deputy
Public Defender,
for defendant-appellant

Kimberly B.M. Taniyama,
Deputy Prosecuting Attorney,
for plaintiff-appellee

extent that the conditions are reasonably related to the factors set forth in section 706-606 and to the extent that the conditions involve only deprivations of liberty or property as are reasonably necessary for the purposes indicated in section 706-606(2), that the defendant:

- (a) Serve a term of imprisonment not exceeding one year in felony cases, and not exceeding six months in misdemeanor cases

³ HRPP Rule 35 provides in relevant part that "[t]he court may correct an illegal sentence at any time"