

NO. 24486

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

No. 24486

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

JASON MANO, Defendant-Appellant.
(Cr. No. 99-0575)

No. 24499

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

JASON MANO, Defendant-Appellant.
(Cr. No. 99-0438)

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NOS. 99-0575 & 99-0438)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Jason Mano appeals from the first circuit court's (1) September 11, 2000 judgments convicting him of and sentencing him for burglary in the first degree, in violation of Hawai'i Revised Statutes (HRS) § 708-810(1)(c) (1993), and (2) August 8, 2001 findings of fact, conclusions of law, and orders denying his motions to set aside illegal sentence sentences.¹ On appeal, Mano contends that the circuit court erred in sentencing him to extended terms of imprisonment and denying his motions to set aside illegal sentences inasmuch as

¹ The Honorable Virginia Lea Crandall presided over these matters.

the imposition of his sentences violated Apprendi v. New Jersey, 530 U.S. 466 (2000).²

Upon carefully reviewing the record and the briefs submitted and having given due consideration to the arguments advanced and the issues raised by the parties, we hold that the circuit court did not err in denying Mano's motions to set aside illegal sentences. In State v. Kaua, 102 Hawai'i 1, 12-13, 72 P.3d 473, 484-85 (2003), this court upheld the constitutionality of HRS § 706-662 in light of the Supreme Court's decision in Apprendi. 102 Hawai'i at 12-13, 72 P.3d at 384-85. Therein, this court acknowledged that "the Apprendi Court held that findings that implicated 'elemental' facts requisite to imposing an enhanced sentence must be charged in the indictment, submitted to the jury, and proven by the prosecution beyond a reasonable doubt." Id. at 12, 72 P.3d at 484. However, this court explained that the predicate facts described in HRS §§ 706-662(1) and (4) are not elemental facts, but rather they are "'extrinsic' to the elements of the offense[.]" Id. at 13, 72 P.3d at 485. In so doing, we clarified

the fundamental distinction between the nature of the predicate facts described in HRS §§ 706-662(1), (3), and (4), on the one hand, and those described in HRS §§ 706-662(5) and (6), on the other. Specifically, the facts at issue in rendering an extended term sentencing determination under HRS §§ 706-662(1), (3), and (4) implicate

² We note that Mano asserts in his points of error that the circuit court erred by failing to make "findings of fact or conclusions of law on the record on May 21, 2001, when it denied Mr. Mano's motions." However, because Mano presents no argument on this issue, it is waived on appeal. See Hawai'i Rules of Appellate Procedure Rule 28(b)(7) (2000) ("Points not argued may be deemed waived.").

considerations completely "extrinsic" to the elements of the offense with which the defendant was charged and of which he was convicted; accordingly, they should be found by the sentencing judge in accordance with Huelsman and its progeny.

Id. at 12-13, 72 P.3d at 484-85 (internal footnote references and citations omitted).

In the instant case, the circuit court found that Mano was a "persistent offender" and "multiple offender" within the meaning of HRS §§ 706-662(1) and (4)(a), respectively. Pursuant to Kaua, these findings "implicate considerations completely 'extrinsic' to the elements of the offense[s] with which the defendant was charged" and, therefore, "should be found by the sentencing judge[.]" Id. at 12-13, 72 P.3d at 484-85.

Accordingly, inasmuch as the circuit court's imposition of Mano's extended term sentences complied with the procedural safeguards mandated by Kaua and Apprendi, the circuit court did not err in denying Mano's motions to set aside illegal sentence. Therefore,

IT IS HEREBY ORDERED that the (1) September 11, 2000 judgments of conviction and sentence and (2) August 8, 2001 findings of fact, conclusions of law, and orders denying Mano's motions to set aside illegal sentences are affirmed.

DATED: Honolulu, Hawai'i, April 16, 2004.

On the briefs:

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