

NO. 24287

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

GREGORY PRENTICE BARNETT, Defendant-Appellant.

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

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Gregory Prentice Barnett appeals from the Second Circuit Court's May 3, 2001 order denying Barnett's Hawai'i Rules of Penal Procedure (HRPP) Rule 35 motion to correct an illegal sentence on the basis of Apprendi v. New Jersey, 530 U.S. 466 (2000).<sup>1</sup> Barnett contends that: (1) the circuit court abused its discretion when it summarily denied Barnett's Rule 35 motion one minute after the motion was filed; and (2) Barnett's extended sentences are illegal under the fourteenth amendment to the United States Constitution and Apprendi.

Upon carefully reviewing the record and the briefs submitted, we hold as follows: (1) there is no evidence that the circuit court erred by denying Barnett's HRPP Rule 35 motion.

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<sup>1</sup> The Honorable Shackley Raffetto presided over the matter.

The clerk's stamp on the document evidences the date the document was filed, not received. See Hawai'i Rules of Circuit Court (HRCC) Rule 2 (requiring the clerk to stamp the time and date on all papers filed). Furthermore, Hawai'i Rules of Penal Procedure (HRPP) Rule 49 provides that "the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk." Moreover, the circuit court correctly denied Barnett's motion, therefore, the amount of time the court spent reviewing his motion is irrelevant; and (2) Barnett's sentence is not illegal under Apprendi. See State v. Kaua, 102 Hawai'i 1, 72 P.3d 473 (2003). Instead, the circuit court correctly followed the two-step process in State v. Huelsman, 60 Haw. 71, 588 P.2d 394 (1978). See also Kaua, 102 Hawai'i at 9, 72 P.3d at 481. First, Barnett stipulated that he was eligible for extended sentencing as a multiple offender and second, the finding that Barnett's incarceration was necessary for the protection of the public was not required because of the plea agreement. Barnett v. State, 91 Hawai'i 20, 30, 979 P.2d 1046, 1056 (1999).

Therefore,

IT IS HEREBY ORDERED that the order denying Barnett's HRPP Rule 35 motion to correct an illegal sentence on the basis

of Apprendi v. New Jersey, 530 U.S. 466 (2000), filed May 3, 2001, is affirmed.

DATED: Honolulu, Hawai'i, July 6, 2004.

On the briefs:

Gregory Prentice Barnett,  
defendant-appellant,  
pro se

Arleen Y. Watanabe,  
Deputy Prosecuting Attorney,  
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State of Hawai'i