

*** NOT FOR PUBLICATION ***

NO. 26170

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

MITCHELL MAU, Defendant-Appellant.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 98-0804)

SUMMARY DISPOSITION ORDER

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

The defendant-appellant Mitchell Mau appeals from the order of the first circuit court, the Honorable Michael A. Town presiding, setting aside the order for conditional discharge, filed on September 23, 2003. Mau's sole contention on appeal is that the circuit court erred in sentencing him to a mandatory term of incarceration as a repeat offender pursuant to Hawai'i Revised Statutes (HRS) § 706-606.5 (1993 & Supp. 2002) rather than to probation under HRS § 706-622.5 (Supp. 2002), inasmuch as Mau asserts, notwithstanding this court's decision in State v. Smith, 103 Hawai'i 228, 81 P.3d 408 (2003), that "the extensive legislative findings and purpose statements behind [HRS § 706-622.5] clearly demonstrate the legislature's intent to afford first-time drug offenders, including repeat offenders[,]. . . the benefit of probation conditioned upon compliance with substance abuse treatment."

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we resolve Mau's appeal as follows:

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This court's decision in State v. Smith, 103 Hawai'i 228, 81 P.3d 408 (2003), is entirely dispositive of the present matter. Id. at 234, 81 P.3d at 414 (holding that "in all cases in which HRS § 706-606.5 is applicable, including those in which a defendant would otherwise be eligible for probation under HRS § 706-622.5, the circuit courts must sentence defendants pursuant to the provisions of HRS § 706-606.5"). This court applied the correct standard of review in interpreting HRS §§ 706-606.5 and 706-622.5. Smith, 103 Hawai'i 228, 233, 81 P.3d 408, 413 ("It is a cardinal rule of statutory interpretation that, where the terms of a statute are plain, unambiguous and explicit, we are not at liberty to look beyond that language for a different meaning. Instead, our sole duty is to give effect to the statute's plain and obvious meaning." (Internal citations and quotation signals omitted.)). Thus, given the "plain and unambiguous" ruling of this court in Smith, the circuit court correctly sentenced Mau pursuant to HRS § 706-606.5 instead of applying HRS § 706-622.5. Therefore,

IT IS HEREBY ORDERED that the circuit court's order setting aside the order for conditional discharge, filed on September 23, 2003, is affirmed.

DATED: Honolulu, Hawai'i, July 23, 2004.

On the briefs:

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deputy prosecuting attorney
for plaintiff-appellee

Deborah L. Kim,
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