*** NOT FOR PUBLICATION ***

NO. 25350

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

MONTE LOUIS YOUNG, JR., Petitioner-Appellant

vs.

STATE OF HAWAIʻI, Respondent-Appellee

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STATE OF HAWAII

APPEAL FROM THE FIRST CIRCUIT COURT
(S.P.P. NO. 01-1-0020 (CR. NO. 97-1194))

SUMMARY DISPOSITION ORDER
(By: Moon, C.J., Nakayama, and Duffy, JJ.
and Acoba, J., dissenting with whom Levinson, J., joins)

Petitioner-Appellant Monte Louis Young, Jr. [hereinafter "Young"] appeals from the first circuit court's[1] September 5, 2002 order denying his Hawaiʻi Rules of Penal Procedure [hereinafter "HRPP"] Rule 40 petition for post-conviction relief.

On appeal, Young essentially contends that the circuit court committed reversible error when it denied his petition and ruled that the Hawaiʻi Paroling Authority [hereinafter "HPA"] did not deprive him of his rights to due process by arbitrarily and capriciously setting his minimum term of incarceration [hereinafter "minimum term"] at one-hundred-years, inasmuch as the minimum term (1) contravened the legislative intent behind, and thus violated, Hawaiʻi Revised Statutes [hereinafter "HRS"] § 706-657 (Supp. 1996),[2] and (2) violated the "law of the case"

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[1] The Honorable Victoria S. Marks presided.

[2] HRS § 706-657 provides, in its entirety, as follows:

§706-657 Enhanced sentence for second degree murder. The
(continued...)

doctrine.

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 hold that:

(1) The HPA's one-hundred-year minimum term violated neither the letter nor the spirit of HRS § 706-657, inasmuch as HRS § 706-657 governs the circuit court's imposition of an enhanced sentence and not the HPA's determination of a minimum term. See HRS § 706-657 (Supp. 1996); State v. Kalama, 94 Hawai'i 60, 64, 8 P.3d 1224, 1228 (2000) ("'[W]e do not resort to legislative history to cloud a statutory text that is clear.'") (Quoting Ratzlaf v. United States, 510 U.S. 135, 147-48 (1994)

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[2](...continued)

> court may sentence a person who has been convicted of murder in the second degree to life imprisonment without possibility of parole under section 706-656 if the court finds that the murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity or that the person was previously convicted of the offense of murder in the first degree or murder in the second degree in this State or was previously convicted in another jurisdiction of an offense that would constitute murder in the first degree or murder in the second degree in this State. As used in this section, the phrase "especially heinous, atrocious, or cruel, manifesting exceptional depravity" means a conscienceless or pitiless crime which is unnecessarily torturous to a victim and "previously convicted" means a sentence imposed at the same time or a sentence previously imposed which has not been set aside, reversed, or vacated.
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> Hearings to determine the grounds for imposing an enhanced sentence for second degree murder may be initiated by the prosecutor or by the court on its own motion. The court shall not impose an enhanced term unless the ground therefor has been established at a hearing after the conviction of the defendant and on written notice to the defendant of the ground proposed. Subject to the provision of section 706-604, the defendant shall have the right to hear and controvert the evidence against the defendant and to offer evidence upon the issue.

(citations omitted)).[3]

(2) The HPA's minimum term did not offend the "law of the case" doctrine inasmuch as (a) our previous holding in State v. Young, 93 Hawai'i 224, 999 P.2d 230 (2000) only precluded the circuit court from imposing an enhanced sentence under HRS § 706-657, id. at 238, 999 P.2d at 244, and (2) we have already concluded that the HPA's one-hundred-year minimum term is not the functional equivalent of an enhanced sentence of life without the possibility of parole. See Ditto v. McCurdy, 98 Hawai'i 123, 128, 44 P.3d 274, 279 (2002) (describing the "law of the case" doctrine).

(3) Young failed to demonstrate a due process violation insofar as the two grounds presented are without merit and any unspecified grounds have been waived. See Hawai'i Rules of Appellate Procedure Rule 28(b)(7) (2002) ("Points not argued may be deemed waived."); Taomae v. Lingle, 108 Hawai'i 245, 257, 118 P.3d 1188, 1200 (2005) (declining to address an alleged due process violation insofar as the "argument [did] not contain any reasoning, supported by citations to case law or authority to constitute discernible argument").

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[3] Young appears to suggest that, by effectively removing the possibility of parole from his life sentence, the HPA has circumvented the procedural prerequisites set forth by the legislature in HRS § 706-657, yet achieved the result contemplated therein. That contention is factually inaccurate insofar as a one-hundred-year minimum term is not the functional equivalent of an enhanced sentence of life without the possibility of parole. Indeed, Young's minimum term is not immutable and he may petition for a reduction of his minimum sentence pursuant to Hawai'i Administrative Rules [hereinafter "HAR"] § 23-700-27 (1992). See HRS § 706-669(5) (providing that the HPA may, "[a]fter sixty days notice to the prosecuting attorney, . . . reduce the minimum term"); HAR § 23-700-26 (1992) (delineating guidelines for determining whether a reduction is warranted). It should be noted that these procedures would not be available had he received an enhanced sentence under HRS § 706-657.

Therefore,

IT IS HEREBY ORDERED that the judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, June 14, 2006.

On the briefs:

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Shawn A. Luiz,
for petitioner-appellant
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