

\*\*\*NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER\*\*\*

NO. 27634

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Respondent/Plaintiff-Appellee

vs.

MICHAEL M. SOMA, Petitioner/Defendant-Appellant

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS  
(CR. NO. 05-1-0179)

ORDER AFFIRMING IN PART AND REVERSING IN PART, THE JUDGMENT OF  
THE INTERMEDIATE COURT OF APPEALS ENTERED ON JULY 3, 2007

(By: Moon, C.J., Levinson, and Nakayama, JJ.;  
With Acoba, J., Concurring Separately and Dissenting,  
With Whom Duffy, J., Joins)

Petitioner/Defendant-Appellant Michael M. Soma

(Petitioner) seeks review of the judgment of the Intermediate Court of Appeals (the ICA)<sup>1</sup> filed on July 3, 2007, issued pursuant to its May 21, 2007 SDO affirming the November 1, 2005 judgment of the Circuit Court of the First Circuit<sup>2</sup> (the court) convicting Petitioner of Terroristic Threatening in the First Degree, Hawai'i Revised Statutes (HRS) § 707-716(1)(d) (1993), and sentencing him to a ten-year term of incarceration with a mandatory minimum of one year, eight months as a repeat offender, to run concurrently with any sentence being served, with credit

<sup>1</sup> The Summary Disposition Order was issued by Chief Judge Mark Recktenwald, and Associate Judges Daniel R. Foley and Craig H. Nakamura.

<sup>2</sup> The Honorable Karl K. Sakamoto presided.

KHAMAMAO  
CLERK, APPELLATE COURT  
STATE OF HAWAII

2007 OCT 19 AM 8:49

FILED

for time served.


Upon consideration of Petitioner's application, the attachments thereto, the briefs filed by Petitioner and Respondent/Plaintiff-Appellee State of Hawai'i, and the record herein,

IT IS HEREBY ORDERED that the July 3, 2007 Judgment of the ICA is affirmed, except with respect to the extended term sentence imposed on Petitioner. See State v. Mauqaoteqa, No. 26657, slip op. at 29-30 (Haw. Oct. 1, 2007) (holding the extended sentencing scheme in HRS §§ 706-661 and -662 unconstitutional). That part of the judgment affirming the extended term sentence is vacated and the case is remanded to the court for resentencing.

DATED: Honolulu, Hawai'i, October 19, 2007.

Shawn A. Luiz,  
for Petitioner/  
Defendant-Appellant

Peter B. Carlisle,  
Prosecuting Attorney,  
Stephen K. Tsushima,  
Deputy Prosecuting Attorney,  
Attorneys for Respondent/  
Plaintiff-Appellee

  
Steven H. Levinson  
