



David Scrivner

265 P.3d 494 (2011) | Cited 0 times | Hawaii Intermediate Court of Appeals | November 30, 2011

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, Leonard and Ginoza, JJ.)

Petitioner-Appellant David Scrivner (Scrivner) appeals from the Findings of Fact, Conclusions of Law, and Order Granting the State of Hawaii's Motion for Reconsideration in Light of New Case Law and Denying Petition for Post-Conviction Relief filed on May 28, 2010 (Order) in the Circuit Court of the First Circuit (Circuit Court).¹

On June 6, 2003, Scrivner pled no contest to Escape in the Second Degree and Robbery in the Second Degree. On August 14, 2003, a judgment of conviction and sentence was entered in which Scrivner was sentenced to five years imprisonment for Escape in the Second Degree, 10 years imprisonment for Robbery in the Second Degree, a mandatory minimum of six years and eight months, and to an extended term of imprisonment on both counts which doubled his sentences to 10 and 20 years respectively. Scrivner did not appeal his conviction.

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

On August 23, 2007, Scrivner filed a Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner From Custody (Petition), pursuant to Hawaii Rules of Penal Procedure Rule 40.

On appeal, Scrivner contends that his extended term of imprisonment is illegal because *State v. Maugaotega*, 115 Hawaii 432, 168 P.3d 562 (2007) (*Maugaotega II*) invalidated Hawaii Revised Statute (HRS) § 706-662 and that HRS § 706-662 was void ab initio.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Scrivner's point of error as follows:

Contrary to Scrivner's argument, *Maugaotega II* does not apply retroactively to cases that became final before *Maugaotega II* was decided. *Loher v. State*, 118 Hawaii 522, 537-38, 193 P.3d 438, 453-54 (App. 2008). Scrivner's sentence to an extended term of imprisonment was not void ab initio. See *State v. Jess*, 117 Hawaii 381, 184 P.3d 133 (2008) and *Loher*, *supra*; *State v. Cutsinger*, 118 Hawaii 68,



David Scrivner

265 P.3d 494 (2011) | Cited 0 times | Hawaii Intermediate Court of Appeals | November 30, 2011

81, 185 P.3d 816, 829 (App. 2008), overruled in part on other grounds by State v. Jess, 117 Hawaii 381, 184 P.3d 133 (2008).

For these reasons, the Circuit Court's May 28, 2010 Order is affirmed.

Presiding Judge

Associate Judge

Associate Judge

1. The Honorable Steven S. Alm presided.

