

NO. 30507

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

DAVID SCRIVNER, Petitioner-Appellant, v.
STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P.P. NO. 07-1-0032; CRIMINAL NO. 03-1-0787)

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 Hawai'i'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

¹ The Honorable Steven S. Alm presided.

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.

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

On appeal, Scrivner contends that his extended term of imprisonment is illegal because State v. Mauqaoteqa, 115 Hawai'i 432, 168 P.3d 562 (2007) (**Mauqaoteqa 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, Mauqaoteqa II does not apply retroactively to cases that became final before Mauqaoteqa II was decided. Loher v. State, 118 Hawai'i 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 Hawai'i 381, 184 P.3d 133 (2008) and Loher, *supra*; State v. Cutsinger, 118 Hawai'i 68, 81, 185 P.3d 816, 829 (App. 2008), overruled in part on other grounds by State v. Jess, 117 Hawai'i 381, 184 P.3d 133 (2008).

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

DATED: Honolulu, Hawai'i, November 30, 2011.

On the briefs:

Walter J. Rodby
for Petitioner-Appellant

Presiding Judge

Brian R. Vincent
Deputy Prosecuting Attorney
for Respondent-Appellee

Associate Judge

Associate Judge