

NO. CAAP-10-0000060

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

SCHUYLER G. DECAIRES, Petitioner-Appellant, v.
STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P.P. NO. 10-1-0033; CR. NO. 51238)

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Schuyler G. Decaires (**Decaires**) appeals from the "Order Denying Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner From Custody, Filed on June 16, 2010," filed on August 31, 2010 (**Order Denying Relief**) in the Circuit Court of the First Circuit (**Circuit Court**).¹

On May 8, 1980, Decaires was found guilty of Rape in the First Degree and Robbery in the First Degree. Decaires was sentenced to an extended term of imprisonment. On February 24, 1982, the Supreme Court of Hawai'i remanded the case for resentencing. On May 3, 1982, Decaires was again sentenced to an extended term of imprisonment. On November 16, 1982, the Supreme Court of Hawai'i affirmed Decaires's conviction.

On June 16, 2010, Decaires filed a Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner From

¹ The Honorable Richard W. Pollack presided.

Custody (**Petition**), pursuant to Hawai'i Rules of Penal Procedure Rule 40.

In the Petition, Decaires contended that his extended term sentence is illegal because State v. Mauqaoteqa, 115 Hawai'i 432, 168 P.3d 562 (2007) (**Mauqaoteqa II**) invalidated Hawaii Revised Statutes (**HRS**) § 706-662 and that HRS § 706-662 was void ab initio. On appeal, Decaires asserts the same claims.

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 Decaires's point of error as follows:

Contrary to Decaires'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). Decaires'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 June 16, 2010 Order Denying Relief is affirmed.

DATED: Honolulu, Hawai'i, September 21, 2011

On the brief:

Schuyler G. Decaires
Petitioner-Appellant Pro Se

Presiding Judge

Loren J. Thomas
Deputy Prosecuting Attorney
for Respondent-Appellee

Associate Judge

Associate Judge