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IN THE SUPREME COURT OF THE STATE OF HAWAII

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STATE OF HAWAII,
Respondent/Plaintiff-Appellant,

vs.

RUBIN IKOA CASUGAY-BADIANG,
Petitioner/Defendant-Appellee.

SCWC-11-0000802

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-11-0000802; CR. NO. 11-1-0523)

JUNE 19, 2013

DISSENTING OPINION BY RECKTENWALD, C.J.,
IN WHICH NAKAYAMA, J., JOINS

I respectfully dissent. The statute governing Methamphetamine Trafficking in the Second Degree provides that a defendant "shall be sentenced" pursuant to that statute, "[n]otwithstanding . . . any other law to the contrary[.]" Hawai'i Revised Statutes (HRS) § 712-1240.8 (Supp. 2006). In my view, this language reflects the legislature's clear intent that

a defendant convicted of Methamphetamine Trafficking in the Second Degree be sentenced pursuant to HRS § 712-1240.8, to the exclusion of all other sentencing schemes, including HRS § 706-667 (Supp. 2006), the Young Adult Defendants statute. Accordingly, I would affirm the judgment of the Intermediate Court of Appeals, which vacated Rubin Ikoa Casugay-Badiang's sentence imposed pursuant to HRS § 706-667, and remanded for resentencing pursuant to HRS § 712-1240.8.

"[T]he fundamental starting point for statutory-interpretation is the language of the statute itself." First Ins. Co. of Hawaii v. A&B Props., 126 Hawai'i 406, 414, 271 P.3d 1165, 1173 (2012). "[W]here the statutory language is plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning." Id. Here, HRS § 712-1240.8 provides:

- (1) A person commits the offense of methamphetamine trafficking in the second degree if the person knowingly distributes methamphetamine in any amount.
- (2) Methamphetamine trafficking in the second degree is a class B felony for which the defendant shall be sentenced as provided in subsection (3).
- (3) Notwithstanding sections 706-620, 706-640, 706-641, 706-600, 706-669, and any other law to the contrary, a person convicted of methamphetamine trafficking in the second degree shall be sentenced to an indeterminate term of imprisonment of ten years with a mandatory minimum term of imprisonment of not less than one year and not greater than four years and a fine not to exceed \$10,000,000; provided that:
 - (a) If the person has one prior conviction for methamphetamine trafficking pursuant to this section or section 712-1240.7, the mandatory minimum term of imprisonment shall be not less than three years, four months and not greater than six years, eight months;
 - (b) If the person has two prior convictions for methamphetamine trafficking pursuant to this section or section 712-1240.7, the mandatory minimum term of imprisonment

- shall be not less than six years, eight months and not greater than ten years; or
- (c) If the person has three or more prior convictions for methamphetamine trafficking pursuant to this section or section 712-1240.7, the mandatory minimum term of imprisonment shall be ten years.

(Emphasis added).

"[T]his court has repeatedly employed a plain-language analysis in interpreting statutes that contain the phrase, 'notwithstanding any other law to the contrary[.]'" State v. Smith, 103 Hawai'i 228, 234, 81 P.3d 408, 414 (2003) (citations omitted). We have held that this language divests the sentencing court of discretion to sentence under any sentencing scheme other than that specified by the applicable statute. Id.; see also State v. Rice, 66 Haw. 101, 657 P.2d 1026 (1993) (holding that, where the prostitution statute provides for specific sentencing "[n]otwithstanding any other law to the contrary," the trial court lacks the power to grant a deferred acceptance of guilty plea in prostitution cases); State v. Dannenberg, 74 Haw. 75, 80, 837 P.2d 776, 778-79 (1992) (reaffirming Rice); cf. State v. Tom, 69 Haw. 602, 604, 752 P.2d 597, 598 (1988) (referencing Rice, and holding that, where the driving under the influence statute provides that the defendant "shall be sentenced" pursuant to that statute, the trial court lacks the power to grant a deferred acceptance of no contest plea in driving under the influence cases).

Moreover, HRS § 706-667 is contrary to HRS § 712-1240.8 because it allows for an indeterminate five-year term of

incarceration, rather than the ten-year term required under HRS § 712-1240.8.¹ Thus, it is not possible to give effect to both sentencing schemes for the same offense. See State v. Richie, 88 Hawai'i 19, 35, 960 P.2d 1227, 1243 (1998) (noting that two statutes conflict where it is not possible to give effect to both). Generally, "[w]here there is a plainly irreconcilable conflict between a general and a specific statute concerning the same subject matter, the specific will be favored." State v. Hussein, 122 Hawai'i 495, 524, 229 P.3d 313, 342 (2010).

However, in the instant case, HRS § 712-1240.8 itself dictates that it shall govern "notwithstanding . . . any other law to the contrary[.]"

In sum, the plain language of HRS § 712-1240.8 is clear and sweeping: it requires that a defendant convicted of the offense of Methamphetamine Trafficking in the Second Degree be sentenced to, inter alia, an indeterminate ten-year term of incarceration, with the mandatory minimum term to be set within specified ranges based on the defendant's prior offenses for

¹ The legislature was not required to expressly enumerate HRS § 706-667 among the statutes excluded from consideration in relation to a sentence for Methamphetamine Trafficking in the Second Degree, see majority opinion at 28, because HRS § 706-667 constitutes "any other law to the contrary," see HRS § 712-1240.8 (emphasis added). Respectfully, by limiting HRS § 712-1240.8 to only those statutes expressly enumerated, the majority renders the phrase "any other law to the contrary" superfluous, contrary to a canon of statutory construction to which we have consistently adhered. See State v. Keawe, 107 Hawai'i 1, 5, 108 P.3d 304, 308 (2005) ("It is a cardinal rule of statutory construction that courts are bound, if rational and practicable, to give effect to all parts of a statute, and no clause, sentence, or word shall be construed as superfluous, void, or insignificant if a construction can be legitimately found which will give force to and preserve all words of the statute." (citation, internal quotation marks, and ellipsis omitted)).

methamphetamine trafficking, if any. This sentence is to be imposed regardless of alternative sentencing provisions set forth in "any other law to the contrary[.]" Accordingly, sentencing pursuant to HRS § 706-667 is unavailable.

State v. Lau, 73 Haw. 259, 831 P.2d 523 (1992), is not to the contrary. There, this court considered whether the sentencing court erred in failing to state its reasons on the record in choosing between a twenty-year sentence for a class A felony and an eight-year sentence pursuant to the Young Adult Defendants statute. Id. at 260-61, 831 P.2d at 523-34. Although HRS § 706-659 provided for a twenty-year term for class A felonies "notwithstanding any other law to the contrary," this court noted that the defendant was qualified to be sentenced under the Young Adult Defendants statute due to his age. Id. at 260, 831 P.2d at 524. However, this court did not resolve whether application of the Young Adult Defendants statute was precluded by the phrase "notwithstanding any other law to the contrary," and that issue was not before the court. See State v. Kikuta, 125 Hawai'i 78, 100 n.2, 253 P.3d 639, 661 n.2 (2011) (noting that a case cannot implicitly stand for a proposition that the court did not address). Respectfully, by reading Lau as supporting Casugay-Badiang's position, the majority abrogates decades of this court's precedent that has held to the contrary. See, e.g., Dannenberg, 74 Haw. at 80, 837 P.2d at 778-79; Smith, 103 Hawai'i at 234, 81 P.3d at 414.

Moreover, despite the plain language of the statute and this court's case law dispositively interpreting the phrase "notwithstanding any other law to the contrary," the majority relies on legislative history to conclude that HRS § 706-667 is a sentencing alternative to HRS § 712-1240.8. See majority opinion at 28-30. Respectfully, however, the legislative history does not reflect the legislature's intent to allow sentencing pursuant to HRS § 706-667 for the offense of Methamphetamine Trafficking in the Second Degree.

The offense of Unlawful Methamphetamine Trafficking, which preceded the offenses of Methamphetamine Trafficking in the First and Second Degrees, was enacted in 2004 to "address the devastating effects of crystal methamphetamine (commonly known as 'ice') abuse in Hawaii."² HRS § 712-1240.6 cmt. (Supp. 2004); 2004 Haw. Sess. Laws Act 44, § 3 at 207-08. The purpose of the original bill was to, inter alia, "impose large penalties for methamphetamine trafficking[.]" H. Stand. Comm. Rep. No. 495-04, in 2004 House Journal, at 1603. The House amended the original bill to "[s]pecify that other statutes relating to sentencing do not apply to the offense of methamphetamine trafficking[.]" Id. at 1604 (emphasis added). The bill that ultimately was enacted into law provided that "[a] defendant convicted of the offense of unlawful methamphetamine trafficking shall be sentenced in

² Previously, offenses relating to methamphetamine trafficking were punishable pursuant to HRS §§ 712-1241 and 712-1242 (Supp. 2002), Promoting a Dangerous Drug in the First or Second Degree.

accordance with this section, notwithstanding sections 706-620(2), 706-659, 706-640, and 706-641." 2004 Haw. Sess. Laws Act 44, § 3 at 207-08 (codified at HRS § 712-1240.6(4)).

In 2005, the legislature convened a committee to conduct a comprehensive review of the Hawai'i Penal Code and to recommend amendments to the code. 2005 Haw. Sess. Laws Act 125, § 2 at 328-29. In its report to the 2006 legislature, the committee noted that "ice" "is now the dominant issue in the criminal justice system." Hawai'i Judicial Council, Report of the Committee to Conduct a Comprehensive Review of the Hawai'i Penal Code, (Dec. 2005) (hereinafter "Report") at 5. To address this issue, the committee recommended repealing HRS § 712-1240.6, and replacing it with new sections that separated methamphetamine trafficking in the first and second degrees into separate offenses. Id. at 10. The committee recommended replacing definite minimum terms with minimum term ranges "to enhance the court's ability to tailor the minimum in accordance with the aggravating and mitigating circumstances of any particular trafficking case." Id. at 56. However, "[t]he applicable mandatory minimum range is to be determined exclusively by the number of the defendant's prior methamphetamine trafficking convictions[.]"³ Id. at 11 (emphasis added).

³ This is contrary to the Young Adult Defendants statute, which allows the court to impose a special indeterminate term of imprisonment, in which the minimum length of imprisonment is set by the Hawaii Paroling Authority in accordance only with HRS § 706-669. HRS § 706-667(3).

The committee proposed legislation to effectuate these recommendations. Id. at 52-54. The committee's recommended prohibition against sentencing under other laws was similar to that contained in HRS § 712-1240.6, but the committee added the phrase, "any other law to the contrary." Compare HRS § 712-1240.6(4) with Report at 53. The legislature subsequently adopted the committee's proposal nearly verbatim. Compare Report at 53 with HRS § 712-1240.8(3).

The history of the methamphetamine trafficking laws from 2004 through 2006 indicates that the legislature intended to impose specific sentencing provisions for the offense of Methamphetamine Trafficking in the Second Degree, to the exclusion of all contrary sentencing schemes, including HRS § 706-667. Specifically, the legislature made clear its intent in 2004 that "other statutes relating to sentencing do not apply[,]" H. Stand. Comm. Rep. No. 495-04, in 2004 House Journal, at 1604, and added the "any other law to the contrary" language in 2006,⁴ 2006 Haw. Sess. Laws Act 230, § 4 at 999

⁴ Legislative action following this court's decision in Dannenberg indicates that the legislature is aware of the meaning of that phrase "notwithstanding any other law to the contrary," and is able to act accordingly. In Dannenberg, this court concluded that the phrase "[n]otwithstanding any other law to the contrary" removed the sentencing court's discretion to grant deferred acceptance of guilty pleas in prostitution cases. 74 Haw. at 80, 837 P.2d at 778. However, the legislature subsequently amended the prostitution statute to allow for deferred acceptance of guilty or no contest pleas in these cases by removing the "notwithstanding any other law to the contrary" language. 2003 Haw. Sess. Laws Act 130, § 1 at 183 (codified at HRS § 712-1200(4) (1993)); see also State v. Hamili, 87 Hawai'i 102, 106 n.5, 952 P.2d 390, 394 n.5 (1998). Had the legislature intended to permit alternative sentencing schemes for the offense of Methamphetamine Trafficking in the Second Degree, it presumably would not have added this language to the statute in 2006. See State v. Reis, 115 Hawai'i

(codified at HRS § 712-1240.8(3)).

It is true that the committee also recommended amendments to HRS § 706-667 in 2006, Report at 27q-27r, and that these amendments were adopted by the legislature, 2006 Haw. Sess. Laws Act 230, § 25 at 1013 (codified at HRS § 706-667 (Supp. 2006)). However, these amendments do not indicate a broad legislative intent to expand the reach of the Young Adult Defendants statute to persons convicted under HRS § 712-1240.8. Rather, the amendments were directed at resolving a particular problem: under the former version of the statute, a defendant's eligibility for Young Adult Defendants sentencing turned on his or her age at the time of sentencing, rather than at the time of the offense, resulting in inequities based on delays in scheduling trial or sentencing. Report at 27r; see also HRS § 706-667 (Supp. 1997). Respectfully, amending HRS § 706-667 to base eligibility on age at the time of the offense does not reflect a legislative intent to remove young adults from the provisions of HRS § 712-1240.8.

Finally, in this case, the sentencing court opined that courts should have greater discretion in the sentencing process than that afforded by HRS § 712-1240.8. "A sentencing judge generally has broad discretion in imposing a sentence." State v. Pecpec, 127 Hawai'i 20, 32, 276 P.3d 589, 601 (2012). However,

79, 97, 165 P.3d 980, 998 (2007) ("[W]e must presume that the legislature knows the law when enacting statutes[.]" (citation omitted)).

"[a] cardinal canon of statutory interpretation is that this court cannot change the language of the statute, supply a want, or enlarge upon it in order to make it suit a certain state of facts. This is because we do not legislate or make laws."

Smith, 103 Hawai'i at 233, 81 P.3d at 413 (citations, brackets, and internal quotation marks omitted). Thus, it is not for this court to afford the sentencing court discretion that the legislature has so clearly curtailed.

Accordingly, I respectfully dissent.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama