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CAAP-13-0003458

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,  
v.  
GREGORY GARCIA, Defendant-Appellant.

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT  
(CR. NO. 12-1-0541(4); FC-CR NO. 12-1-0327(4))

MEMORANDUM OPINION

(By: Nakamura, C.J., and Foley and Leonard, JJ.)

The issue in this appeal is whether the statements made by the Circuit Court of the Second Circuit (Circuit Court)<sup>1/</sup> at sentencing were sufficient to justify its imposition of consecutive terms of imprisonment totaling twenty years on Defendant-Appellant Gregory Garcia (Garcia). As explained below, we conclude that the Circuit Court's statements at sentencing were sufficient to explain its rationale for imposing consecutive sentences and to demonstrate that it had considered the required factors. We therefore affirm the Circuit Court's sentence.

BACKGROUND

I.

Plaintiff-Appellee State of Hawaii (State) charged Garcia with multiple offenses in two separate cases. In FC-CR

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<sup>1/</sup> The Honorable Richard T. Bissen, Jr. presided.

No. 12-1-0327(4), the State charged Garcia by felony information and non-felony complaint with: (1) Felony Abuse (by choking) of a Family or Household Member; and (2) Terroristic Threatening in the Second Degree. In CR. No. 12-1-0541(4), the State charged Garcia by indictment with: (1) Sexual Assault in the First Degree (Count 1); (2) Kidnapping (Count 2); (3) Felony Abuse (by choking) of a Family or Household Member (Count 3); (4) Intimidating a Witness (Count 4); (5) Assault in the Second Degree (Count 5); (6) Violation of an Order for Protection (Count 6); (7) Theft in the Third Degree (Count 7); (8) Promoting Pornography for Minors (Count 8); and (9) Violation of an Order for Protection (Count 9). The complaining witness (CW) for the charged offenses in both cases was Garcia's girlfriend.

The Circuit Court consolidated the two cases for trial. Pursuant to a plea agreement, Garcia pleaded no contest in FC-CR No. 12-1-0327(4) to: (1) Felony Abuse (by choking) of a Family or Household Member and (2) Terroristic Threatening in the Second Degree, and in CR. No. 12-1-0541(4) to: (1) the reduced charge of Unlawful Imprisonment (Count 2); (2) Felony Abuse (by choking) of a Family or Household Member (Count 3); (3) Intimidating a Witness (Count 4); (4) Assault in the Second Degree (Count 5); and (5) Violation of an Order for Protection (Count 6).

## II.

Prior to sentencing, the State filed a "Motion for Consecutive Terms of Imprisonment." In support of its motion, the State asserted that "[Garcia] has a long history of violence, violating protective orders, and manipulation and intimidation of women[,] " which included the following:

1. A conviction for Abuse of a Family or Household Member in FC-CR No. 07-1-0035(4), in which Garcia punched his then wife in the head and threatened her life, while she was trapped in her vehicle, after she sought help in getting a temporary restraining order against him and had indicated she wanted a divorce. Garcia's probation for this conviction was

revoked when he was again convicted of Abuse of a Family or Household Member in FC-CR No. 07-1-0426(4).

2. In FC-CR No. 07-1-0426(4), Garcia was convicted of Abuse of a Family or Household Member for slapping and punching his then girlfriend, while she was in his car.

3. In February 2008, Garcia was charged in FC-CR No. 08-1-0069(4) with Violation of an Order for Protection that had been granted in favor of the victim in FC-CR No. 07-1-0426(4). Garcia allegedly threatened the victim, who was trying to end their relationship, and Garcia said, "If you leave me, I'll break your neck." Pursuant to a plea agreement, Garcia pleaded guilty to, and was convicted of, Contempt of Court.

4. In July 2008, Garcia was indicted on charges involving the same victim as in FC-CR No. 07-1-0426(4) and FC-CR No. 08-1-0069(4) for Felony Abuse of a Family or Household Member (two counts), Terroristic Threatening in the First Degree, and Violation of an Order for Protection. Garcia allegedly head-butted the victim twice, choked her, and picked up a sharp metal tool and threatened to kill her while she was holding her infant son. Pursuant to a plea agreement, Garcia pleaded guilty to, and was convicted of, the reduced charge of Misdemeanor Abuse of a Family or Household Member and Violation of an Order for Protection.

5. In April 2010, Garcia was arrested for Violation of an Order for Protection and was subsequently found guilty of that charge. He was sentenced to 120 days confinement and two years of probation.

In its Motion for Consecutive Terms of Imprisonment, the State also detailed the nature and circumstances of the offenses for which Garcia was to be sentenced. With respect to FC-CR No. 12-1-0327(4), the State asserted that on May 2, 2012, while in Garcia's car, Garcia and the CW argued about why the CW did not want to have a baby with Garcia. Garcia slapped the CW in the back of the head several times, grabbed her hair and yanked her head back, bit the CW on the arm, choked her to the

point that she could not breathe, and told her to "shut the fuck up" or he would kill her. Based on this incident, the CW obtained an Order for Protection against Garcia, and Garcia was eventually charged with Felony Abuse of a Family or Household Member and Terroristic Threatening in the Second Degree.

With respect to CR. No. 12-1-0541(4), Garcia showed up unannounced at the CW's workplace, the day before he was scheduled to appear in court for the charges in FC-CR No. 12-1-0327(4). Garcia pleaded with the CW to take him back; had sexual intercourse with the CW despite her pleas for him to stop; and then apologized to her. Garcia attempted to convince the CW to refrain from testifying against him on the pending charges or to lie to exonerate him. When the CW refused to do so, Garcia threatened to make it difficult for the CW to obtain visitation with her daughter by telling the CW's ex-husband that Garcia and the CW had continued to see each other. While the CW was answering a phone call to her office, Garcia grabbed the CW's cell phone from her purse, and he saw something that made him angry. Garcia grabbed the CW by the neck, choked her, punched her in the face, and bit her. Garcia grabbed a letter opener and began cutting his own wrist. The CW was able to escape, run outside, and call for help. Garcia fled the scene with the CW's cell phone. Garcia had previously taken a video of himself and the CW having sex while the protective order was in effect and had threatened to use the video against the CW. After fleeing the scene, Garcia used the CW's cell phone to send the video to the CW's 14-year-old daughter, the daughter's grandmother, and the CW's co-workers.<sup>2/</sup>

The State argued that pursuant to Hawaii Revised Statutes (HRS) §§ 706-606 and 706-668.5, the Circuit Court should impose consecutive sentences because they were warranted due to

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<sup>2/</sup> Garcia filed a "Sentencing Memorandum" in which he acknowledged sending the "recent video of the couple engaging in sex (taken the week before) to several people on [the CW's] contact list, including [the CW's 14-year-old daughter]."

(a) the nature and circumstances of the offenses; (b) the history and characteristics of Garcia; and (c) the need for the imposition of consecutive sentences. With respect to this last factor, the State argued:

There is a need for imposition of consecutive sentences for numerous reasons. Consecutive sentences are needed to reflect the seriousness of Defendant's actions in these two separate violent offenses. The Defendant has a history of domestic violence and was on probation when he committed the first offense in May, 2012. He knew how serious it was to have a new charge of Felony Abuse [of a Family or Household Member] and Terroristic Threatening but, even new serious charges could not stop this violent manipulative Defendant. He went and tried to force the victim to change her story and not testify against him. Witness intimidation by the use of threats or in this case, violence, especially in a domestic violence situation, needs to be dealt with harshly. Witness intimidation in any form but, especially combined with violence perpetrated on the same victim, undermines our justice system. Consecutive sentencing is the only way to appropriately reflect the seriousness of Defendant's actions.

Additionally, consecutive sentences are needed to promote respect for the laws relating to protection of persons, especially in a domestic violence situation. It is needed to deter future similar conduct of this Defendant. The Defendant has been given every possible opportunity to not re-offend. He has been shown leniency in his previous jail terms, he has been put on probation, and he has undergone counseling. Absolutely nothing else has been able to deter his conduct therefore, it is time he is sentenced consecutively for 2 separate violent offenses. Furthermore, consecutive sentences are needed to protect the public from future crimes of the Defendant[.]

The State recommended that the Circuit Court impose consecutive sentences for a total combined sentence of ten years of incarceration, with the possibility of parole.

III.

Garcia filed a Sentencing Memorandum in which he requested that he be sentenced to probation. In his Sentencing Memorandum, Garcia argued:

Given his youth and lack of any prior felony conviction, a prison sentence is not appropriate. Gregory Garcia is a first time felon who deserves a chance on felony probation. With the benefit of hindsight he now sees that he was blinded by his emotions and the highly sexual, abusive relationship. He acknowledges his wrongdoing in this case and is remorseful for his foolish actions . . . . He knows that he has problems with anger management and is seeking help in this area. Gregory Garcia has positive

plans for his future. He has marketable job skills and a desire to further his education. Further, he has a strong family support.

The death of his father while he was in jail was an eye opener. He has profited by his lengthy confinement.<sup>[3/]</sup> Previously he was in denial but now realizes his problems with anger management and life skills. The Probation Department has programs that will be able to address Garcia's short-comings. His new humbled character and attitudes show that he will listen to and obey his probation officer if given the chance on probation.

IV.

Garcia appeared for sentencing on August 21, 2013. The Circuit Court heard argument on the State's Motion for Consecutive Terms of Imprisonment from both the State and Garcia. The Circuit Court also heard Garcia's sentencing allocution. The Circuit Court then imposed sentence, stating as follows:

THE COURT: You know, Mr. Garcia, I have been involved in probably 90 percent of the cases that you've had on the fourth floor. I know Judge August handled one of the matters, and one of the cases I have today was originally assigned to Judge Loo.

And I also, when I used to do the [Temporary Restraining Order (TRO)] calendar, handled some of the TRO cases that you were involved in as well.

And I can honestly say that I have tried everything that was within my power, except for prison, to try to help you change. Try to help you see that you might have other ways of handling your anger. And I can now see that nothing has worked. None of the classes. None of the jail. None of the lectures, which you're not going to get a long lecture today. You've done enough talking for all of us today, actually.

But, yeah, I was the guy who gave you that five days. And, you know, when a judge gives somebody five days for the first offense, they think it's a long time and they think that will shake somebody up enough to say, boy, I don't want to do six, or seven, or eight, or nine, or ten days.

But in that very first case I had resentenced you to 30 days thinking, well, that's six times more than the first sentence I gave. That has to work, because he's a bright man. He's the son of a defense attorney. He comes from a good family. It's got to work.

I was wrong again. You have proven me wrong more times than any other defendant that has come before me.

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<sup>3/</sup> Garcia was in custody pending sentencing.

So, I said, well, maybe he needed more time. The last sentence I gave you was 120 days. That might be the one you did on weekends. And it didn't work.

You've not only been ordered to classes, you have completed the classes with flying colors. But you see you don't get credit for finishing the classes, you get credit for applying the skills that you were supposed to have learned in the class. You can't come here today with diplomas and say -- certificates of completion, and say, look all that I've done, because the proof is there. The proof is what you've done to her that tells us those classes, in your case, have not worked.

And the therapy, the letter from your therapist who's said he's treated you for two years, you have wasted your money. And he says, you need more treatment and I'm happy to help. You can come see me every week, every month, I'll continue to treat it. It hasn't worked. None of it has worked. Because if it had worked, you wouldn't be here now.

So I'm sorry to say, Mr. Garcia, is that I am giving up on you today. I can't think in the last eight and a half years that I've sat on this bench that I have said that to any person, ever. I mean I've given people sentences they deserved, that's for sure.

But I have never said to someone what I'm saying to you today. I am giving up on you, Mr. Garcia. There's no more treatment. No more programming. Nothing that I can do. And I've tried.

You know, there's an old saying, there's no such thing as bad students, only bad teachers. Maybe I've been a bad teacher to you, Mr. Garcia. Because maybe if I'd done something sooner this wouldn't have happened. I don't know. Maybe not.

But today's the day we straighten everything out. Today's the day you start this change you said you experienced in prison, and whether it's based on fear of other inmates, fear of the unknown, fear of how long you're going to be in, whatever the reason is, if it's working, then it's working.

In FC-CR 12 -- oh, I'm sorry, I do have to leave you with one concern I have.

This is a very disturbing case to me on many levels. While this is not the worst case of physical harm that I have seen from the bench, this is probably one of the worst cases of psychological harm that I have seen.

Your attempt to break-up this family by sending out a video of intimate sexual acts between you and the victim to her daughter, her employer, her ex-husband, her mother-in-law, I can't imagine how mean-spirited someone has to be to do that.

Don't even say a word.

I can not imagine what it takes for another human being to do that to someone. To want to win so badly that

you would send this to the people you sent it to with the hope that they would view it so that they would have an opinion of her.

Probably the ultimate in manipulation that you were seeking. You tried to manipulate this Court several times, Mr. Garcia. That was the ultimate.

I guess you were trying to break her spirit is what you were doing, I think. You threatened to do that and you followed through. And I don't know how proud you were of yourself for doing that, or if that's included in your list of regrets, but that, I can say, is something I have not seen before. You hold the record.

And that speaks louder to your, I guess, resentment was the word you used earlier. And the degree with which you would go to show her how upset you were.

It wasn't enough that you beat her physically. It wasn't enough. Because that was just physical. That would heal. You went after her very core and her support group. I think she's bounced back. I think it didn't work. I think it didn't work.

And so, the sentence you deserve today is on FC-CR 12-1-0327, count one, felony abuse of a family or household member, five years imprisonment. You are committed to the custody of the Department of Public Safety.

In count two, for the offense of terroristic threatening in the second degree, you are sentenced to one year. Those terms to run concurrent.

In Criminal Number 12-1-0541, count one, unlawful imprisonment in the first degree, you're sentenced to five years. Excuse me, that was count two.

Count three, felony abuse of family household member, five years. Those terms to run consecutive to each other.

Count four, intimidating a witness, five years. That term to run consecutive to the two other terms.

Assault in the second degree, count five, five years. That will run concurrent.

And count six, violation of an order for protection, one year, will run concurrent. That totals 15 years.

Those terms will run consecutive to the sentence in 12-1-0327 for a grand total of 20 years imprisonment, Mr. Garcia. With four of those terms to run concurrent. Excuse me, four of those terms to run consecutive.

Hana, did you get it as I spelled it out? Five and one on the first. Five, five, five on the next three. Concurrence five and one. The total that I know you're wanting to know is 20 years.

You will pay restitution in the amount of \$540.95 as determined by the Judiciary Monetary Restitution Program and



as a freestanding order. That manner of payment will be 30 percent of all gross earnings while in custody. Ten percent of any net earnings while not in custody.

You'll pay the Crime Victim Compensation Fees of \$105.00 in count one and \$55.00 in count two, in 327. \$105.00 in counts two, three, four and five each. And 55 in count six. That total \$635.00.

You'll provide swab samples, print or hand impressions as required by the collecting agency's rules and regulations or provide blood specimens as required by the collecting agency rules and regulations for Law Enforcement Identification Analysis.

You'll pay the monetary assessment of \$500.00 or the actual cost of the DNA analysis, whichever is less, to the DNA Special Registry Fund.

Credit for 365 days on both criminal numbers. That is all.

The Circuit Court entered its Judgment on August 21, 2013. On September 5, 2013, the Circuit Court entered its written "Order Granting State's Motion for Consecutive Terms of Imprisonment." The Circuit Court's order states in relevant part as follows:

Pursuant to Hawaii Revised Statutes (H.R.S.), Sections 706-606 and 706-668.5, the Court considered the nature and circumstances of the Defendant's offenses, the history and characteristics of the Defendant, and the need for the sentence to reflect the seriousness of the offenses, to promote respect for the law, to deter other criminal conduct, and to protect the public from further crimes of the Defendant when the Court sentenced Defendant to consecutive terms of imprisonment. Based on the factors set forth in H.R.S. §§ 706-606 and 706-668.5, the Court found that the Defendant's offenses were of a violent and serious nature causing injury and involving intimidation of a witness with violence to either change her story or refuse to testify against him. The Court also found that the Defendant has a long history of violence, violating protective orders, and intimidating women. The Court stated it has tried every available resource, except prison, to try to rehabilitate the Defendant to no avail. Lastly, the Court found consecutive sentences were needed to reflect the seriousness of the offenses, to promote respect for the law, to deter other criminal conduct, and to protect the public from further crimes of the Defendant.

The Circuit Court's order then sets forth the combination of consecutive and concurrent sentences it imposed that resulted in a total of twenty years of imprisonment.

DISCUSSION

On appeal, Garcia contends that the Circuit Court abused its discretion in imposing consecutive sentences because: (1) the Circuit Court "failed to consider the factors under HRS § 706-606 when it imposed consecutive terms of imprisonment"; and (2) the Circuit Court "failed to explain and articulate a meaningful rationale for imposing consecutive terms of imprisonment." As explained below, we conclude that the Circuit Court did not abuse its discretion in imposing consecutive sentences.

I.

We review a sentencing court's imposition of sentence for abuse of discretion.

A sentencing judge generally has broad discretion in imposing a sentence. The applicable standard of review for sentencing or resentencing matters is whether the court committed plain and manifest abuse of discretion in its decision. Factors which indicate a plain and manifest abuse of discretion are arbitrary or capricious action by the judge and a rigid refusal to consider the defendant's contentions. And, generally, to constitute an abuse it must appear that the court clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant.

State v. Kong, 131 Hawai'i 94, 101, 315 P.3d 720, 727 (2013) (format altered; citations omitted).

Under HRS § 706-668.5(1) (Supp. 2013), a sentencing court has discretion to order that multiple terms of imprisonment be served concurrently or consecutively. In making this determination, the court must consider the factors set forth in HRS § 706-606. HRS § 706-668.5(2) (1993). "The weight to be given the factors set forth in HRS § 706-606 in imposing sentence is a matter generally left to the discretion of the sentencing court, taking into consideration the circumstances of each case."

State v. Akana, 10 Haw. App. 381, 386, 876 P.2d 1331, 1334 (1994).

HRS § 706-606 (1993) provides:

The court, in determining the particular sentence to be imposed, shall consider:

- (1) The nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) The need for the sentence imposed:
  - (a) To reflect the seriousness of the offense, to promote respect for law, and to provide just punishment for the offense;
  - (b) To afford adequate deterrence to criminal conduct;
  - (c) To protect the public from further crimes of the defendant; and
  - (d) To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) The kinds of sentences available; and
- (4) The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

"Absent clear evidence to the contrary, it is presumed that a sentencing court will have considered all factors before imposing concurrent or consecutive terms of imprisonment under HRS § 706-606." Kong, 131 Hawai'i at 102, 315 P.3d at 728 (internal quotation marks, brackets, and citation omitted). Nevertheless, in State v. Hussein, 122 Hawai'i 495, 510, 229 P.3d 313, 328 (2010), the Hawai'i Supreme Court prospectively imposed the requirement that "circuit courts must state on the record at the time of sentencing the reasons for imposing a consecutive sentence." In Hussein, the supreme court stated:

Although to this point we have recognized the benefits of a statement of reasons but not mandated it, we now conclude, based on the reasons and circumstances set forth *supra*, that a court must state its reasons as to why a consecutive sentence rather than a concurrent one was required.

Such a requirement serves dual purposes. First, reasons identify the facts or circumstances within the range of statutory factors that a court considers important in determining that a consecutive sentence is appropriate. An express statement, which evinces not merely consideration of the factors, but recites the specific circumstances that led the court to impose sentences consecutively in a particular case, provides a meaningful rationale to the defendant, the victim, and the public.

Second, reasons provide the conclusions drawn by the court from consideration of all the facts that pertain to the statutory factors. It is vital, for example, for the defendant to be specifically informed that the court has concluded that he or she is dangerous to the safety of the public, or poses an unacceptable risk of re-offending, or that rehabilitation appears unlikely due to his or her lack of motivation and a failure to demonstrate any interest in treatment, or that the multiplicity of offenses and victims and the impact upon the victims' lives warrant imposition of a consecutive term. Hence, reasons confirm for the defendant, the victim, the public, and the appellate court, that the decision to impose consecutive sentences was deliberate, rational, and fair.

Consequently, after the filing date of the judgment herein, circuit courts must state on the record at the time of sentencing the reasons for imposing a consecutive sentence.

Hussein, 122 Hawai'i at 509-10, 229 P.3d at 327-28.

In Kong, the supreme court held that the following statements made by the circuit court at sentencing were sufficient to satisfy the new requirement imposed by Hussein:

"Taking into consideration all of the factors set forth in HRS § 706-606, including the extensive record of the defendant, which includes six burglary convictions, . . . ten felonies, which represents a lot of harm in our community.

The Court is going to impose the following sentence in this matter. The defendant will be committed to the care and custody of the Director of the Department of Public Safety for a period of ten years on Count 1, five years on Count 2.

. . . .

In view of his extensive criminality, the Court is going to make these counts run consecutive for a total of fifteen years, mittimus forthwith, full credit for time served.

I will order that he be given an opportunity to participate in the Cash Box drug treatment program at the earliest convenience of the Department of Public Safety."

Kong, 131 Hawai'i at 99, 315 P.3d at 725 (brackets omitted).

In upholding the sentencing court's imposition of consecutive sentences, the supreme court explained:

[T]he sentencing court is not required to articulate and explain its conclusions with respect to every factor listed in HRS § 706-606. Rather, "it is presumed that a sentencing court will have considered all factors before imposing concurrent or consecutive terms of imprisonment under HRS

§ 706-606." Thus, the sentencing court is required to articulate its reasoning only with respect to those factors it relies on in imposing consecutive sentences.

Id. at 102, 315 P.3d at 728 (citations omitted). The supreme court held that the sentencing court's statement regarding Kong's "extensive criminality" (1) "identified the specific facts or circumstances within the range of statutory factors that the court considered in imposing a consecutive sentence"; and (2) "provided a rational and fair basis within the range of statutory factors for the imposition of consecutive sentences." Id. at 103, 315 P.3d at 729.

## II.

Here, the Circuit Court made extensive statements on the record that explained its reasons for imposing consecutive sentences on Garcia. The Circuit Court recounted its involvement in Garcia's prior criminal cases, the numerous opportunities for rehabilitation it gave to Garcia, and the numerous attempts it made to help Garcia change. The Circuit Court stated that as Garcia's continuing criminal conduct in the instant cases had shown, its attempts to rehabilitate Garcia had failed, and the Circuit Court stated that it was "giving up on [Garcia]" and believed that he was not entitled to further attempts at rehabilitation. The Circuit Court discussed the nature and circumstances of Garcia's offenses and Garcia's character. The Circuit Court stated that Garcia's conduct resulted in "one of the worst cases of psychological harm" the Circuit Court had seen. The Circuit Court specifically referred to Garcia's conduct in sending a video of his intimate sexual acts with the CW to the CW's daughter, her employer, her ex-husband, and her mother-in-law. The Circuit Court stated that it "[could] not imagine what it takes for another human being to do that to someone[,]" and it characterized Garcia's sending the video tape to the CW's support group as "the ultimate in manipulation[.]" The Circuit Court prefaced its imposition of the consecutive

sentences on Garcia by stating that it was "the sentence you deserve today[.]"

Although the Circuit Court could have done a better job of explaining its reasons for imposing consecutive sentences by specifically linking its statements to the factors set forth HRS § 707-606,<sup>4/</sup> we conclude that the Circuit Court's statements were sufficient to satisfy the requirements of Hussein. The purposes of the statement of reasons required by Hussein are to: "(1) identify[] the facts or circumstances within the range of statutory factors that the court considered, and (2) confirm[] for the defendant, the victim, the public, and the appellate court that the decision was deliberate, rational, and fair." Kong, 131 Hawai'i at 102-03, 315 P.3d 728-29. The Circuit Court's statements at sentencing were sufficient to fulfill these purposes.

The Circuit Court's statements at sentencing demonstrated that in imposing consecutive sentences, it was relying on the statutory factors of: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; and (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for law, to deter Garcia from additional criminal conduct, and to protect the public from further crimes by Garcia. The Court explained that it had given Garcia numerous previous chances and opportunities for rehabilitation, and that Garcia had squandered

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<sup>4/</sup> In this regard, we note that the Circuit Court's written Order Granting State's Motion for Consecutive Terms of Imprisonment, which was filed after sentencing, clearly explained the Circuit Court's reasons, with reference to the specific factors under HRS § 706-606 that the Circuit Court relied upon, for determining that consecutive terms of imprisonment were necessary. Certainly, had the Circuit Court used this same format at sentencing to express its views, there would be no question that the Circuit Court had complied with the requirements of Hussein. In Hussein, however, the supreme court stated that circuit courts must state their reasons for imposing consecutive sentences "on the record at the time of sentencing[.]" Hussein, 122 Hawai'i at 510, 229 P.3d at 328. Thus, based on Hussein, we cannot rely on the Circuit Court's post-sentence order, but must rely on the Circuit Court's statements at sentencing, in determining whether the Circuit Court sufficiently explained its reasons for imposing consecutive sentences.

and rejected those chances. The Circuit Court discussed the significant harm resulting from Garcia's conduct. The Circuit Court's statements reveal that it believed Garcia was not entitled to any more chances, and that his character was depraved, mean-spirited, manipulative, and lacking in compassion for others. The Circuit Court's statements show that it believed that Garcia was not amenable to rehabilitation and thus the focus of Garcia's sentencing should be on punishing him and deterring him from future crimes by imposing an extensive total term of incarceration.

The Circuit Court's extensive statements at sentencing provided clear insight into its thinking and reasoning in imposing the consecutive sentences. We conclude that the Circuit Court's statements served the purposes of, and were sufficient to: (1) "identify[] the facts or circumstances within the range of statutory factors that the [Circuit Court] considered" in imposing consecutive sentences; and (2) "confirm[] for the defendant, the victim, the public, and the appellate court that the decision was deliberate, rational, and fair." See Kong, 131 Hawai'i at 102-03, 315 P.3d 728-29.

CONCLUSION

For the foregoing reasons, we affirm the Circuit Court's Judgment.

DATED: Honolulu, Hawai'i, July 31, 2014.

On the briefs:

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(Summit Law Offices)  
for Defendant-Appellant

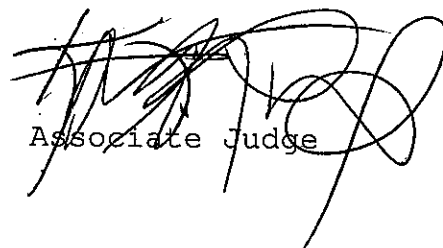
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County of Maui  
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Chief Judge



Associate Judge



Associate Judge