CONCURRING AND DISSENTING OPINION BY NAKAMURA, C.J.

I generally agree with the decisions reached by the majority on the various arguments raised by Petitioner-Appellant Desmond J. Lewi (Lewi) on appeal. However, unlike the majority, I would remand the case for a hearing on Lewi's claim that the Hawaiʻi Paroling Authority (HPA) acted arbitrarily and capriciously in determining that he was a Level III offender on his manslaughter conviction.

The majority correctly notes that after the Circuit Court denied Lewi's petition, the HPA gave Lewi another minimum term hearing and issued a new minimum term order. The new minimum term order reduced the minimum term on Lewi's manslaughter conviction from 20 years to 16 years, but the HPA continued to classify Lewi as a Level III offender on the manslaughter conviction. In my view, Lewi has raised a colorable claim as to whether the HPA acted arbitrarily and capriciously in determining that he was a Level III offender on his manslaughter conviction.[1/] Under the circumstances of this case, rather than requiring Lewi to file another petition to challenge the HPA's new minimum term order, I would remand the case for a hearing on whether the HPA acted arbitrarily and capriciously in continuing to classify Lewi as a Level III offender on his manslaughter conviction.

In my view, the record reveals some uncertainty as to whether the sentencing court adequately explained its reasons for imposing Levi's manslaughter and prohibited possession of firearm sentences consecutively. See State v. Barrios, 139 Hawaiʻi 321, 335-36, 389 P.3d 916, 930-31 (2016); State v. Kong, 131 Hawaiʻi 94, 101-04, 315 P.3d 720, 727-30 (2013); State v. Hussein, 122 Hawaiʻi 495, 509-10, 229 P.3d 313, 327-28 (2010). Lewi did not

[1/] In its new minimum term order, the HPA identified "Nature of Offense" as the significant factor on which it based its Level III level of punishment for the manslaughter conviction. It appears that in determining that Lewi was a Level III offender on the manslaughter conviction, the HPA must have relied upon the criteria that "[t]he offense was against a person(s) and the offender displayed a callous and/or cruel disregard for the safety and welfare of others[,]" as the other criteria for classifying a defendant as a Level III offender based on the "Nature of Offense" factor manifestly do not apply.

challenge his consecutive sentences on the ground that the sentencing court failed to adequately explain its reasons for imposing consecutive sentences in his petition in the Circuit Court or in this appeal. As noted, I believe the case should be remanded for a hearing to permit Lewi to challenge the HPA's new minimum term order. I would also permit Lewi on remand to raise a claim regarding the adequacy of the sentencing court's reasons for imposing consecutive sentences.