

SUPREME COURT OF HAWAI‘I

State v. Emch

183 P.3d 755 (Haw. 2008) · No. No. 28009 · Decided April 21, 2008

SUMMARY

The Supreme Court of Hawai‘i vacated Bob Emch’s extended-term sentence because the sentencing scheme then in effect violated his Sixth Amendment right to a jury trial under Apprendi and related precedent. The court remanded for resentencing consistent with State v. Jess, including the possibility of resentencing under a judicially reformed or legislatively amended extended-term sentencing scheme.

CASE DETAILS

COURT	Supreme Court of Hawai‘i
WRITING FOR THE COURT	Per curiam; Moon, C.J.; Levinson, J.; Nakayama, J.; Duffy, J.; Acoba, J. (dissenting)
JURISDICTION	Hawaii
DECIDED	April 21, 2008
DOCKET	No. 28009
DISPOSITION	vacated
PROCEDURAL POSTURE	Emch petitioned for a writ of certiorari to review the Intermediate Court of Appeals' summary disposition order affirming the circuit court's denial of his motion to correct an illegal sentence.
STANDARD OF REVIEW	Review on certiorari of whether the extended-term sentence was illegal and unconstitutional under the cited constitutional precedents; the opinion does not expressly state a separate standard-of-review formulation.
PRECEDENTIAL VALUE	Published Hawai‘i Supreme Court opinion; precedential.
PARTIES	Bob Emch v. State of Hawai‘i

TOPICS

- sentencing
- sentencing guidelines
- sixth amendment
- criminal procedure
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Emch's extended-term sentence imposed under Hawai'i Revised Statutes § 706-662(1) was unconstitutional and illegal because the sentencing court, rather than a jury, made the finding that an extended term was necessary for the protection of the public.
2. Whether the case should be remanded for resentencing and whether the circuit court could impose an extended term under a judicially reformed statute or the subsequently amended statutory scheme.

HOLDINGS

1. An extended-term sentence imposed under the applicable version of Hawai'i Revised Statutes § 706-662(1) is illegal because the sentencing court made the additional finding that extended imprisonment was necessary for the protection of the public, thereby violating the defendant's Sixth Amendment right to a jury trial under *State v. Maugaotega II*.
2. On remand, and upon appropriate motion, the circuit court may resentence Emch to an extended term by exercising its inherent authority to judicially reform the applicable statute or by using the provisions of the legislatively amended sentencing scheme identified in *State v. Jess*.

KEY QUOTATIONS

"As such, under Maugaotega II, the sentence violates Emch's sixth amendment right to a jury trial and is therefore illegal." (183 P.3d 755)

"Therefore, IT IS HEREBY ORDERED that Emch's extended term sentence is vacated and this case is remanded to the circuit court for resentencing consistent with our opinion in Jess." (183 P.3d 755)

FACTUAL BACKGROUND

The circuit court imposed an extended-term sentence on Bob Emch under Hawai'i Revised Statutes §§ 706-661 and 706-662(1) after finding that he was a persistent offender whose extended imprisonment was necessary for the protection of the public. The sentence was imposed under the pre-2007 version of Hawai'i's extended-term sentencing scheme, which permitted the sentencing court to make the additional necessity finding. Emch challenged the sentence as violating his Fifth, Sixth, and Fourteenth Amendment rights under *Apprendi* and related decisions.

PROCEDURAL HISTORY

The circuit court of the first circuit denied Emch's motion to correct an illegal sentence on May 31, 2006. The Intermediate Court of Appeals affirmed in a summary disposition order. The Hawai'i Supreme Court accepted Emch's application for a writ of certiorari because the ICA's decision was inconsistent with *State v. Maugaotega II*, then vacated the extended-term sentence and remanded for resentencing consistent with *State v. Jess*.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The case is remanded to the circuit court for resentencing consistent with *State v. Jess*. Upon appropriate motion, the circuit court may impose an extended term under a judicially reformed version of Hawai‘i Revised Statutes § 706-662 or under the provisions of Act 1, the amended sentencing scheme.

CASES CITED

- *Apprendi v. New Jersey*, 530 U.S. 466 (2000)
- *State v. Mugaotege II*, 115 Hawai‘i 432, 168 P.3d 562 (2007)
- *Cunningham v. California*, 549 U.S. ___, 127 S. Ct. 856 (2007)
- *State v. Jess*, No. 28483, Slip Op. (Haw. Mar. 31, 2008)