

NOT FOR PUBLICATION

NO. 26575

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
EUGENE JAMES HUTCH, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 96-2224)

NOTED AT BAR
CLERK APPELLATE COURT
STATE OF HAWAII

2005 MAY 12 AM 9:04

FILED

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Eugene James Hutch (Hutch) appeals from the "Order Denying Defendant's Motion for Reconsideration of Sentence Pursuant to [Hawai'i Rules of Penal Procedure (HRPP)] Rule 35" entered on May 3, 2004 by the Circuit Court of the First Circuit (circuit court).^{1/}

On December 18, 1996, Hutch pled guilty to Robbery in the Second Degree in violation of Hawaii Revised Statutes (HRS) § 708-841(1)(a) (1993). On February 19, 1997, Hutch was sentenced to ten years of imprisonment, to be served concurrently with the sentences in two of his other cases.^{2/}

On May 3, 2004, seven years after his sentencing, Hutch filed a "Motion for Reconsideration of Sentence Pursuant to Rule 35" (Rule 35 Motion), in which he argued that his sentence should

^{1/} The Honorable Richard K. Perkins presided.

^{2/} The Honorable John S.W. Lim presided.

be reduced to the time served on probation. Hutch contended that his motion was untimely filed because, in part, he had to proceed pro se, the prison law library was inadequate, and he was denied access to the courts. The circuit court denied the Rule 35 Motion as untimely pursuant to HRPP Rule 35(b) (2004).

Upon careful review of the record and the briefs submitted by the parties, we hold:

(1) Hawai'i Rules of Penal Procedure Rule 35 time limits are jurisdictional. State v. Williams, 70 Haw. 566, 570, 777 P.2d 1192, 1195 (1989). Hutch filed his Rule 35 Motion seven years after his sentence was imposed, and his motion is untimely pursuant to HRPP Rule 35(b).

Therefore,

IT IS HEREBY ORDERED that the "Order Denying Defendant's Motion for Reconsideration of Sentence Pursuant to Rule 35" filed on May 3, 2004 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, May 12, 2005.

On the briefs:

Eugene James Hutch,
defendant-appellant pro se.

Lisa, M. Itomura and
Bryan C. Yee,
Deputy Attorneys General,
for plaintiff-appellee.


Acting Chief Judge


Associate Judge


Associate Judge