

NOT FOR PUBLICATION

NO. 26728

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

EUGENE JAMES HUTCH, Petitioner-Appellant, v.
STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE FIRST CIRCUIT COURT
(S.P.P. NO. 03-1-0027)

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

2005 JUL 15 AM 10:27

FILED

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant pro se Eugene James Hutch (Hutch) appeals from the "Findings of Fact, Conclusions of Law, and Order Dismissing Petitioner Eugene James Hutch's Petition to Vacate, Set Aside, or Correct Judgment or Release Petitioner from Custody Without a Hearing" (Order) filed on July 20, 2004 in the Circuit Court of the First Circuit^{1/} (circuit court). Hutch filed his Petition to Vacate, Set Aside, or Correct Judgment or Release Petitioner from Custody (Petition) pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 40.

On April 29, 2003, Hutch filed his Petition, alleging that unnamed prison staff continued to deny him access to the courts by taking legal materials, he had been wrongfully punished to stop his parole chances, unnamed prison staff were retaliating against him, he was being punished for helping other inmates with

^{1/} The Honorable Michael A. Town presided.

their legal matters, the prison law library was "inadequate," he was "wrongfully" charged with violating prison regulations, he was "wrongfully" denied entry into the Salvation Army drug treatment program, prison staff "wrongfully" denied his request to attend his mother-in-law's funeral, all of his civil rights claims should be transferred to a civil court, and all his misconducts should be heard and removed from his record.

In its Order, the circuit court ruled as a matter of law that Hutch's claims in his Petition were moot, without merit, patently frivolous, had been previously raised and ruled upon, or had been waived. Hutch timely appealed.

On appeal, Hutch contends that (1) prison staff have wrongfully denied his access to the courts by taking his legal materials away; (2) he has been wrongfully punished by prison staff to stop his parole chances; and (3) he has been wrongfully retaliated against by prison staff.

Hutch's contentions on appeal were previously raised and ruled upon, waived, or have no merit. HRPP Rule 40(g)(2). Hutch's contentions regarding his legal work were raised and addressed in a prior Rule 40 petition (S.P.P. No. 02-1-0052; Cr. No. 96-1076). Hutch v. State, No. 25711 (Hawai'i June 29, 2005). To the extent his contentions were not raised, they were waived.

Therefore,

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IT IS HEREBY ORDERED that the "Findings of Fact, Conclusions of Law, and Order Dismissing Petitioner Eugene James Hutch's Petition to Vacate, Set Aside, or Correct Judgment or Release Petitioner from Custody Without a Hearing" filed on July 20, 2004 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, July 15, 2005.

On the briefs:

Eugene James Hutch,
petitioner-appellant pro se.

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


Acting Chief Judge


Associate Judge


Associate Judge