

NOT FOR PUBLICATION

NO. 26589

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

FRANCIS A. DEFEO, Petitioner-Appellant, v.  
STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE SECOND CIRCUIT COURT  
(S.P.P. NO. 03-1-0019(3))

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant pro se Francis A. Defeo (Defeo) appeals from the "Order Denying, Without Hearing, Petition to Vacate, Set Aside, or Correct Judgment or Release Petitioner from Custody" (Order) filed on May 5, 2004, and the "Order Denying Motion for Reconsideration of Order Denying, Without Hearing, Petition to Vacate, Set Aside, or Correct Judgment or Release Petitioner from Custody" filed on June 15, 2004, in the Circuit Court of the Second Circuit<sup>1/</sup> (circuit court). Defeo filed his "Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody" (Petition) on December 15, 2003, pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 40.

On December 20, 1996, Defeo was indicted for Attempted Murder in the Second Degree in violation of Hawaii Revised

---

<sup>1/</sup> The Honorable Joseph E. Cardoza presided.

ETI. RIMANDO  
CLERK, APPELLATE COURTS,  
STATE OF HAWAII

2005 JUL 28 AM 8:40

FILED

Statutes (HRS) §§ 705-500 (1993) and 707-701.5 (1993), Assault in the Second Degree in violation of HRS § 707-711(1)(d) (1993), and Terroristic Threatening in the First Degree in violation of HRS § 707-716(1)(d) (1993). A jury found Defeo guilty of Attempted Murder in the Second Degree. The circuit court sentenced Defeo to life imprisonment with the possibility of parole. Judgment was entered on July 30, 1997.

Defeo appealed from the Judgment (S.C. No. 20929<sup>2/</sup>). On appeal, Defeo raised a single issue: insufficiency of the evidence. Defeo did not dispute that he stabbed the victim; rather, he contended that "a single, non-life threatening stab wound to the abdomen which was inflicted under the circumstances as he believed them to be, did not 'strongly corroborate' his intent to commit murder and [was], therefore, insufficient to support a reasonable inference as to that state of mind." On October 14, 1998, this court filed a Summary Disposition Order affirming the Judgment. Defeo filed a writ of certiorari to the Hawai'i Supreme Court; this was denied on November 20, 1998.

On September 15, 2000, Defeo, pro se, filed a Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody in S.P.P. No. 00-1-0009(3), alleging ineffective assistance of counsel. On June 21, 2001, the circuit

---

<sup>2/</sup> We take judicial notice of the record and files in S.C. No. 20929, S.P.P. No. 00-1-0009(3), and S.C. No. 24405.

court denied the petition without a hearing. Defeo, pro se, appealed the denial (S.C. No. 24405). On February 3, 2004, the Hawai'i Supreme Court affirmed the circuit court's denial of the petition.

On December 15, 2003, Defeo filed this Petition, in which he argued that, pursuant to State v. Webster, 94 Hawai'i 241, 11 P.3d 466 (2000), "[t]here was no substantial evidence that [Defeo] caused substantial and/or major bodily injury" to the victim in his case. Defeo argued that the injury to the victim in his case was a superficial laceration. Defeo also argued that his appellate counsel in his 1997 appeal was ineffective because, although his counsel argued substantial evidence, his counsel failed to argue that the injury to the victim was "superficial and did not cause major avulsion or substantial bodily injury." The State filed its response on January 13, 2004.

On May 5, 2004, the circuit court filed its Order, in which the court stated:

The Court recognizes that [Defeo] may consider the instant Petition challenging the sufficiency of the evidence different from his earlier challenge to the sufficiency of evidence because his direct appeal was decided in 1998, before the issuance of a decision in State v. Webster, 94 Hawai'i 241, 11 P.3d 466 (2000). Nevertheless, [Defeo] previously raised the issue of the sufficiency of the evidence to support the Attempted Murder in the Second Degree conviction. This issue has already been ruled upon.

The circuit court concluded that "(1) the issue sought to be presented by Petitioner was previously raised and ruled upon; and

(2) Petitioner's claims are patently frivolous and without a trace of support either in the record or from other evidence submitted by Petitioner." On June 1, 2004, Defeo filed a motion for reconsideration of the Order; the circuit court denied the motion on June 15, 2004. Defeo timely appealed.

On appeal, Defeo contends (1) that, under Webster, this court should set aside his life with the possibility of parole sentence because there was no substantial evidence that he caused substantial and/or major bodily injury to the victim because the victim in his case merely suffered a superficial laceration, and (2) he received ineffective assistance of appellate counsel because his appellate counsel in 1997 did not argue that the injury to the victim was "superficial and did not cause major avulsion or substantial bodily injury."

The circuit court was correct in denying the Petition because the issues raised by Defeo had been previously raised and ruled upon, were waived, or were patently frivolous.

Therefore,

The "Order Denying, Without Hearing, Petition to Vacate, Set Aside, or Correct Judgment or Release Petitioner from Custody" filed on May 5, 2004, and the "Order Denying Motion for Reconsideration of Order Denying, Without Hearing, Petition to Vacate, Set Aside, or Correct Judgment or Release Petitioner from

Custody" filed on June 15, 2004, in the Circuit Court of the Second Circuit are affirmed.

DATED: Honolulu, Hawai'i, July 28, 2005.

On the briefs:

Francis A. Defeo,  
Petitioner-Appellant pro se.

Benjamin M. Acob,  
Deputy Prosecuting Attorney,  
County of Maui,  
for Respondent-Appellee.

*Corinne Ka Watanabe*

Acting Chief Judge

*[Signature]*

Associate Judge

*Charles R. Foley*  
Associate Judge