

NOT FOR PUBLICATION

NO. 26719

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
EDWIN CARINEO, Defendant-Appellant

K. HANAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2006 FEB 15 AM 9:53

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT
(CR. NO. 98-0198)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Edwin Carineo (Carineo) appeals from the "Order Denying Petition for Reconsideration in the Denial of Petitioner's Motion to Correct Illegally Imposed Sentence Pursuant to Hawaii Rules of Penal Procedure Rule 40 for the Failure to Answer or Respond in a Timely Manner to Motion Pursuant to Hawaii Rules of Appellate Procedure Rule 28"^{1/} filed on July 1, 2004 in the Circuit Court of the Fifth Circuit (circuit court).^{2/}

On appeal, Carineo argues that his "Petition for Reconsideration in the Denial of Petitioner's Motion to Correct Illegally Imposed Sentence Pursuant to Hawaii Rules of Penal Procedure Rule 40 for the Failure to Answer or Respond in a

^{1/} This court is without jurisdiction to consider any of Carineo's arguments concerning the circuit court's order denying his motion to correct his illegally imposed sentence.

^{2/} The Honorable Clifford L. Nakea presided.

Timely Manner to Motion Pursuant to Hawaii Rules of Appellate Procedure Rule 28" filed May 4, 2004, should have been granted because (1) he should not have been charged with Escape in the Second Degree and (2) the State of Hawaii (the State) failed to respond to Carineo's "Motion to Correct Illegally Imposed Sentence Pursuant to Hawai'i Rules of Penal Procedure Rule 35"^{3/} filed August 1, 2003, in a timely manner as prescribed in the Hawaii Rules of Appellate Procedure (HRAP) Rule 28.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues as raised by the parties, we conclude:

(1) The circuit court did not err in holding that Carineo had waived the issue of the charge of Escape in the Second Degree, to which Carineo had pled no contest. Hawai'i Rules of Penal Procedure (HRPP) Rule 35; HRPP Rule 40.

(2) Carineo's argument that HRAP Rule 28 governs the State's response to an HRPP Rule 35 motion is patently frivolous.

Therefore,

IT IS HEREBY ORDERED that the "Order Denying Petition for Reconsideration in the Denial of Petitioner's Motion to Correct Illegally Imposed Sentence Pursuant to Hawaii Rules of

^{3/} In accordance with Hawai'i Rules of Penal Procedure (HRPP) Rule 35(a), the circuit court treated Carineo's "Motion to Correct Illegally Imposed Sentence Pursuant to Hawai'i Rules of Penal Procedure Rule 35" as a motion filed pursuant to HRPP Rule 40.

Penal Procedure Rule 40 for the Failure to Answer or Respond in a Timely Manner to Motion Pursuant to Hawaii Rules of Appellate Procedure Rule 28" filed on July 1, 2004 in the Circuit Court of the Fifth Circuit is affirmed.

DATED: Honolulu, Hawai'i, February 15, 2006.

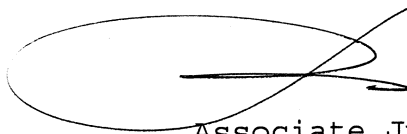
On the briefs:

Edwin Carineo,
Defendant-Appellant pro se.

Tracy Murakami,
Deputy Prosecuting Attorney,
County of Kaua'i,
for Plaintiff-Appellee.



Acting Chief Judge



Associate Judge



Associate Judge