

NOT FOR PUBLICATION

NO. 26878

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

LORIN JAMES MCRAE, Petitioner-Appellant, v.
STATE OF HAWAI'I, Respondent-Appellee

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P.P. NO. 04-1-0022 (Cr. No. 96-1066))

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Lorin James McRae (McRae) appeals from the Order Denying Petition for Post-Conviction Relief Without Hearing (Order) filed on August 31, 2004 in the Circuit Court of the First Circuit^{1/} (circuit court). Pursuant to Hawai'i Rules of Penal Procedure Rule 40, McRae filed his Petition for Post-Conviction Relief (Rule 40 Petition) on March 16, 2004.

In his Rule 40 Petition, McRae alleged that unnamed "prison staff" had made an error in his "max date" of March 22, 2008 under Hawaii Revised Statutes (HRS) § 706-671(1) and that the "counselor, case manager, and unit team manager" would not give him a copy of his record of presentence credits unless he paid a copying fee of fifty cents per page. McRae contended that he did not receive credit for the time he served in pre-trial

^{1/} The Honorable Derrick H.M. Chan presided.

detention and his "max date should be June 2006." However, McRae did not specify how unnamed prison staff had made an error in his "max date" or attach any proof that an error had been made.

The State filed its answer on April 16, 2004 to the Rule 40 Petition and asked the circuit court to take judicial notice of the records and files in Cr. Nos. 96-1066 (the case underlying the Rule 40 Petition), 97-1958 and 98-0599. The State also set forth the history of the underlying case: After McRae entered a plea of no contest to Burglary in the First Degree, the circuit court sentenced him to five years of probation and one year of imprisonment. After McRae served his one year of imprisonment, he was released. McRae subsequently violated the conditions of his probation, and on August 11, 1999, the circuit court revoked his probation and resentenced him to ten years of imprisonment. Pursuant to a March 12, 2004 letter from the Hawaii Paroling Authority (HPA) to McRae, as of August 11, 1999, McRae had 725 days of credit for time served in Cr. No. 96-1066. At some point McRae made parole and was released; his whereabouts were unknown from April 14, 2003 to November 21, 2003. Taking into account the length of time McRae's parole was suspended while his whereabouts were unknown, the HPA recalculated McRae's maximum indeterminate sentence and determined his sentence would expire on or about March 22, 2008.

On August 31, 2004, the circuit court filed the Order, finding that McRae's claims were "without merit, patently frivolous and without a trace of support, either in the record or from other evidence submitted by [McRae]," and denied the Rule 40 Petition without a hearing.

On September 20, 2004, McRae filed an opposition memorandum to the State's answer, but did not serve a copy on the State.

On October 6, 2004, McRae filed a notice of appeal.

On appeal, McRae contends the HPA incorrectly calculated his maximum sentence date. He also raises for the first time that he received ineffective assistance of counsel from the Office of the Public Defender and private counsel should have been appointed for him, certain of his claims concerning deprivation of his rights should have been transferred to the civil division, unnamed prison law library staff refused to make copies for him, and he was denied access to the courts.^{2/}

Upon careful review of the record and briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we conclude that McRae's claim is without merit.

Therefore,

^{2/} "Issues not properly raised on appeal will be deemed to be waived." Pele Defense Fund v. Paty, 73 Haw. 578, 613, 837 P.2d 1247, 1268 (1992).

The Order Denying Petition for Post-Conviction Relief Without Hearing filed on August 31, 2004 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, March 24, 2006.

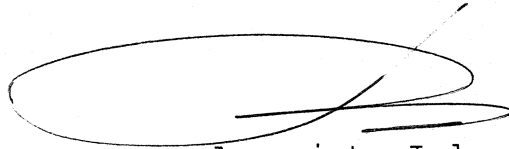
On the briefs:

Lorin James McRae,
Petitioner-Appellant pro se.

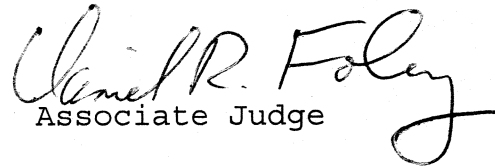
Lisa M. Itomura and
Bryan C. Yee,
Deputy Attorneys General,
for Respondent-Appellee.



Acting Chief Judge



Associate Judge



Associate Judge