

NO. 27014

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

WAYNE E. HUNT, Petitioner-Appellant, v.  
STATE OF HAWAI'I, Respondent-Appellee

E.M. RIMANDO  
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. 04-1-0067 (Cr. No. 95-1794))

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Wayne E. Hunt (Hunt) appeals from the Order Denying Petition for Post-Conviction Relief filed on November 18, 2004 in the Circuit Court of the First Circuit<sup>1/</sup> (circuit court). Hunt filed his Petition for Post-Conviction Relief (Rule 40 Petition) on August 10, 2004 pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 40.

In 1996, a jury found Hunt guilty of Attempted Murder in the Second Degree, in violation of Hawaii Revised Statutes §§ 705-500 (1993), 707-701.5 (1993), and 706-656 (1993). At trial, Hunt was represented by the Office of the Public Defender. The circuit court sentenced Hunt to life imprisonment with the possibility of parole with a mandatory minimum term of imprisonment of 15 years for Hunt's use of a firearm in the commission of a felony and filed the Judgment on December 5, 1996.

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<sup>1/</sup> The Honorable Dexter D. Del Rosario presided.

Hunt appealed the Judgment and had new counsel for his appeal. Hunt raised the following issues in his appeal: (1) the circuit court denied him a fair trial and effective assistance of counsel by excluding defense evidence and limiting cross-examination evidence or questioning; (2) the circuit court improperly permitted the State to introduce irrelevant, prejudicial evidence of guns, ammunition, and the like without a nexus to the crime; (3) the circuit court should have granted his motion for judgment of acquittal; and (4) the circuit court should have granted his motion to set aside the verdict or for new trial. On March 5, 1998, in No. 20360, the Supreme Court affirmed Hunt's conviction by Summary Disposition Order.

On August 10, 2004, Hunt filed his Rule 40 Petition, in which he alleged that (1) the trial judge was biased against him; (2) the deputy prosecuting attorney committed misconduct during closing argument; and (3) the circuit court erred in failing to instruct the jury as to the included offense of Attempted Murder in the Second Degree. On October 1, 2004, Hunt filed a supplemental memorandum in support of his Rule 40 Petition, in which he alleged that he had received ineffective assistance of counsel because his trial counsel failed to (1) comment and/or file a motion regarding the trial judge's bias against him; (2) object to the deputy prosecuting attorney's prejudicial comments during closing argument; and (3) object to the use of the term

"victim" during trial and even used the term on multiple occasions. The State filed its answer on November 9, 2004.

On November 18, 2004, the circuit court denied the Rule 40 Petition without a hearing on the grounds that Hunt's claims were deemed waived under HRPP Rule 40(a)(3) and were patently frivolous and without a trace of support either in the record or from other evidence submitted by Hunt.

On appeal, Hunt contends:

(1) the circuit court erred when it denied his Rule 40 Petition without a hearing;

(2) the trial judge's statements to the deputy prosecuting attorney during motions in limine were prejudicially unfair to Hunt;

(3) the deputy prosecuting attorney's misconduct in the closing argument denied Hunt his right to a fair trial;

(4) the circuit court erred in failing to instruct the jury as to the included offense of Attempted Murder in the Second Degree; and

(5) he received ineffective assistance of counsel.

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 raised by the parties, we hold:

(1) The circuit court properly denied Hunt's Rule 40 Petition without a hearing as "the issues sought to be raised have been previously ruled upon or were waived." HRPP Rule 40(a)(3).

(2) Hunt failed to show "1) that there were specific errors or omissions reflecting counsel's lack of skill, judgment, or diligence; and 2) that such errors or omissions resulted in either the withdrawal or substantial impairment of a potentially meritorious defense." State v. Wakisaka, 102 Hawai'i 504, 514, 78 P.3d 317, 327 (2003).

Therefore,

The Order Denying Petition for Post-Conviction Relief filed on November 18, 2004 in the Circuit Court of the First Circuit is affirmed.

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

On the briefs:

Wayne E. Hunt,  
Petitioner-Appellant pro se.

Loren J. Thomas,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for Respondent-Appellee.

  
Chief Judge

  
Associate Judge

  
Associate Judge