

NO. 27188

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

JOSEPH RANDALL O'NEILL, Petitioner-Appellant,
STATE OF HAWAII, Respondent-Appellee

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APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(S.P.P. NO. 94-1-009K (Cr. No. 94-159K))

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding Judge, Foley and Fujise, JJ.)

Petitioner-Appellant pro se Joseph Randall O'Neill (O'Neill) appeals from the Order Dismissing Petition for Post-Conviction Relief filed on December 1, 2004 in the Circuit Court of the Third Circuit^{1/} (circuit court). O'Neill filed his Petition for Post-Conviction Relief (Rule 40 Petition) on October 4, 2004 pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 40.

In the underlying criminal case (Cr. No. 94-0159K), O'Neill entered a plea of no contest to Murder in the Second Degree (Hawaii Revised Statutes (HRS) § 707-701.5(1) (1993)). Prior to accepting O'Neill's plea, the circuit court conducted a colloquy with O'Neill to determine whether his plea was voluntary. After the circuit court accepted his plea, O'Neill filed a motion on October 9, 1996 to withdraw his plea. At the

^{1/} The Honorable Ronald Ibarra presided.

hearing on O'Neill's motion, O'Neill orally moved to withdraw his motion to withdraw his no contest plea. The circuit court granted the oral motion, finding that O'Neill knowingly, voluntarily, intelligently and with consultation of his attorney withdrew his motion to withdraw his no contest plea. The circuit court sentenced O'Neill to life imprisonment with the possibility of parole. O'Neill did not appeal from his conviction and sentence.

In 1998, pursuant to HRPP Rule 40, O'Neill filed a Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody in S.P.P. No. 98-003K^{2/} (First Petition). O'Neill argued, among other things, that he had been denied effective assistance of counsel because:

1. his attorney had failed to present evidence to the Hawaii Paroling Authority (HPA) of manslaughter through the testimony of or letter from Dr. Acklin;
2. he did not have adequate access to his attorney because his attorney was in Kona, while he was Hilo;
3. his attorney did not object to the "extended coverage" publicity;

^{2/} Pursuant to Hawaii Rules of Evidence Rule 201, this court takes judicial notice of the records and files in S.P.P. No. 98-003K and S.P.P. No. 02-1-0007K.

4. his attorney did not argue the defense of intoxication, particularly as it related to his psychiatric problems;

5. his attorney did not move to dismiss Count II of the indictment;

6. his attorney did not ask the HRS Chapter 704 panel about the effect of O'Neill's mental illness on his defenses; and

7. his attorney conceded to the HPA that O'Neill had committed a premeditated act.

After a hearing on O'Neill's First Petition, the circuit court concluded that O'Neill had not been denied effective assistance of counsel, he had understood the proceedings, and his mental illness had not interfered with his ability to do so. However, the circuit court did grant O'Neill a new parole hearing due to the HPA's failure to give a written explanation for deviating from its own guidelines when it set O'Neill's minimum sentence and because the statements made by the prosecutor at O'Neill's parole hearing were in violation of the plea agreement.

In January 2003, O'Neill filed an Amended Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody in S.P.P. No. 02-1-0007K (Second Petition). The Second Petition was dismissed by stipulation.

In 2004, O'Neill filed the Rule 40 Petition, in which he alleged:

1. His attorney "failed to raise issues as to [] my state of mind at the time of the alleged murder."

2. His attorney "coerced petitioner into signing plea agreement."

3. O'Neill had not signed the form stating that he waived his rights to an attorney before being questioned by the police and the police did not suggest to him that he have an attorney present during questioning.

4. His attorney worked for the State because during O'Neill's sentencing or resentencing hearing his attorney sat on the State's side of the courtroom and advised the State.

In his Rule 40 Petition, O'Neill offered no supporting facts beyond the four allegations set forth above.

On December 1, 2004, the circuit court dismissed the Rule 40 Petition as patently frivolous and found that the issues raised had been previously waived pursuant to HRPP Rule 40(g)(2).

On appeal, O'Neill contends:

1. His conviction resulted from the ineffective assistance of his attorney because his attorney did not object to the news media's extended coverage publicity of O'Neill's trial.

2. His conviction resulted from the ineffective assistance of his attorney because his attorney (a) failed to

show him reports from Dr. Acklin, (b) failed to present the expert testimony of Dr. Acklin to the circuit court or HPA that would have tended to show that O'Neill had committed manslaughter by reason of emotional disturbance rather than murder, and (c) failed to present to the HPA at O'Neill's minimum sentencing hearing a report from Dr. Acklin. O'Neill claims that he would not have pleaded no contest to murder if his attorney had shown him the results and conclusions of Dr. Acklin's evaluations or if he had known that Dr. Acklin would not be generating a report to be used at his minimum sentencing hearing.

3. His attorney coerced him into entering into the plea agreement with the State. O'Neill argues that his attorney failed to advise him of negative consequences that could have resulted from his no contest plea, and if O'Neill had received proper legal advice, he would not have pleaded no contest.

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 conclude the circuit court properly denied O'Neill's Rule 40 Petition as O'Neill's claims were "previously ruled upon or were waived." HRPP Rule 40(a)(3). Additionally, O'Neill's claims were "patently frivolous and . . . without trace of support either in the record or from other evidence submitted by the petitioner." HRPP Rule 40(f).

Therefore,

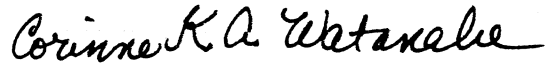
The Order Dismissing Petition for Post-Conviction Relief filed on December 1, 2004 in the Circuit Court of the Third Circuit is affirmed.

DATED: Honolulu, Hawai'i, August 25, 2006.

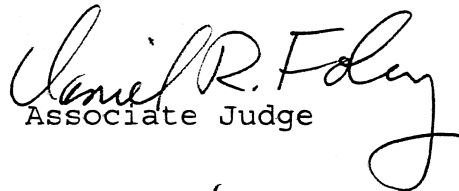
On the briefs:

Joseph Randall O'Neill,
Petitioner-Appellant pro se.

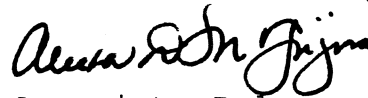
Carol S.W. Kitaoka,
Deputy Prosecuting Attorney,
County of Hawai'i,
for Respondent-Appellee.



Presiding Judge



Associate Judge



Associate Judge