

NO. 27630

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

RICHARD ADAM, Petitioner-Appellant,
v.
STATE OF HAWAII, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(S.P.P. NO. 03-1-001K)

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Richard Adam (Adam), pro se, appeals from the Judgment entered on November 4, 2005 in the Circuit Court of the Third Circuit.¹

On April 27, 2000 the court entered a judgment convicting Adam of (1) Assault in the Second Degree, Hawaii Revised Statutes (HRS) § 707-711(1)(d) (1993), and (2) Terroristic Threatening in the First Degree, HRS §§ 707-715(1) and 717-716(1)(d) (1993), and sentencing him to probation for five years for each count. On November 26, 2001, in response to Adam's appeal, this court affirmed the April 27, 2000 judgment.

On September 13, 2002, Respondent-Appellee State of Hawaii filed a motion for revocation of Adam's probation and commenced contempt of court proceedings against Adam. An order resentencing after revocation of probation and the judgment sentencing Adam for Criminal Contempt of Court were filed on December 1, 2003. Adam was sentenced to thirty days imprisonment for Criminal Contempt of Court and imprisonment for an

¹ The Honorable Ronald Ibarra presided.

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"indeterminate period of FIVE (5) YEARS for each" of the two other crimes. All terms were concurrent. On April 20, 2005, in appeal no. 26259, the December 1, 2003 order and judgment were affirmed by a summary disposition order wherein this court held that (1) the circuit court did not abuse its discretion in revoking Adam's probation and resentencing him, (2) Adam failed to show a clear and precise demonstration of prejudice on the part of the circuit court judge, (3) the circuit court did not err in accepting Adam's decision not to request a trial before a different judge, (4) there was substantial evidence to support the circuit court's decision that Adam wilfully disobeyed the court and was guilty of Contempt of Court, (5) the circuit court did not abuse its discretion by sentencing Adam without granting Adam additional time to hire a private attorney, and (6) the lack of a transcript precluded this court from considering Adam's contention that the circuit court failed to comply with the right-to-counsel and waiver-of-counsel requirements stated in State v. Char, 80 Hawai'i 262, 267, 909 P.2d 590, 595 (App. 1995), and State v. Dickson, 4 Haw. App. 614, 673 P.2d 1036 (1983).

On February 4, 2003, pursuant to Rule 40, Hawai'i Rules of Penal Procedure (HRPP), Adam filed a "Petition for Post-Conviction Relief (Rule 40 Petition)" asserting thirty-two grounds. On February 5, 2003, Adam filed additional exhibits to "complete" the Rule 40 Petition. On January 2, 2004, Adam filed a document asserting nine additional grounds. On February 18,

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2004, Adam filed one document asserting one ground and a second document asserting six grounds. On March 5, 2004, Adam filed a document asserting one more ground.

On May 20, 2005, Adam filed a "Motion to Have My Rule 40 Petition on Terroristic Threatening and Assault and Contempt of Court Set for a Hearing". A June 1, 2005 order denied this motion on the basis "that [Adam's] claims are patently frivolous and without trace of support either in the record or from other evidence submitted by [Adam]."

On June 16, 2005, Adam filed a "Notice of Appeal of the Circuit Court Judge Ibarra's Denial of My Motion to Have My Rule 40 Petition on Terroristic Threatening and Assault and Contempt of Court Set for a Hearing". On September 21, 2005, the Hawai'i Supreme Court filed an order dismissing Adam's June 16, 2005 appeal because "the circuit court has denied a hearing in SPP No. 03-1-0001K pursuant to HRPP 40(f), but has not disposed of the proceeding by entering a judgment dismissing or denying the petition pursuant to HRPP 40(g)(2). Thus, the appeal of the June 1, 2005 order denying a hearing is premature and we lack jurisdiction."

On November 3, 2005, notwithstanding the June 1, 2005 order and the fact that there was no evidentiary hearing to support any findings of fact, the circuit court entered "Findings of Fact, Conclusions of Law and Order Denying & Dismissing Petitioner's Petition for Post Conviction Relief".

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On November 4, 2005, the circuit court entered the Judgment that "denied and dismissed" Adam's February 4, 2003 Rule 40 Petition. On November 28, 2005, Adam filed a notice of appeal.

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties and duly considering and applying the law relevant to the issues raised and arguments presented, we hold that the circuit court properly denied Adam's Rule 40 Petition. We do so on the grounds that (1) "the issues sought to be raised have been previously ruled upon or were waived[,]" HRPP Rule 40(a)(3), (2) "a full and fair evidentiary hearing upon that [specific] question [of fact] was held during the course of the proceedings which led to the judgment or custody which is the subject of the petition," and/or (3) Adam's "claim is patently frivolous and is without trace of support either in the record or from other evidence submitted by [Adam,]" HRPP Rule 40(f).

Therefore, IT IS HEREBY ORDERED that the Judgment entered on November 4, 2005 is affirmed.

DATED: Honolulu, Hawai'i, September 29, 2006

On the briefs:

Richard Adam
Pro Se Petitioner-Appellant.

Dale Yamada Ross,
Deputy Prosecuting Attorney,
County of Hawai'i,
for Respondent-Appellee.


Chief Judge


Associate Judge


Associate Judge