

NO. 27025

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

MICHAEL EDWARD COULTER, Petitioner-Appellant,
STATE OF HAWAII, Respondent-Appellee

K. HAMAKAOU
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APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P.P. NO. 03-1-0038 (Cr. No. 02-1-1513))

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Michael Edward Coulter (Coulter) appeals from the Findings of Fact, Conclusions of Law, and Order Denying Petition for Post-Conviction Relief filed on November 29, 2004 in the Circuit Court of the First Circuit^{1/} (circuit court). Coulter filed his Petition for Post-Conviction Relief (Rule 40 Petition) on August 21, 2003 pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 40.

In the underlying criminal case, Coulter entered a guilty plea to one count of Negligence Homicide in the First Degree, in violation of Hawaii Revised Statutes (HRS) § 707-702.5 (1993), and one count of Accidents Involving Death or Serious Bodily Injury, in violation of HRS § 291C-12 (1993). The circuit court sentenced Coulter to ten years of imprisonment as to each count, said sentences to run concurrently.

^{1/} The Honorable Richard K. Perkins presided.

On November 13, 2002, Coulter signed the Notice of Hearing and Rights and Request for Legal Counsel for the hearing to fix his minimum terms of imprisonment (minimum hearing), indicating that he would obtain private counsel, wished to appear at the hearing, and acknowledged that his hearing would be sometime in January 2003. On December 23, 2002, the HPA sent Coulter a Notice of Hearing, setting his minimum hearing for January 6, 2003. Coulter's counsel requested that the hearing be continued because counsel did not receive the notice until January 2, 2003. On January 7, 2003, Coulter's counsel sent copies of support letters, Coulter's autobiography, and two transcripts to the HPA for review by the HPA Board (Board) prior to the minimum hearing. On February 15, 2003, the HPA notified Coulter that his minimum hearing was set for March 11, 2003.

On March 11, 2003, Coulter, represented by counsel, appeared before the HPA for his minimum hearing. On March 15, 2003, the HPA issued a notice and order setting Coulter's minimum terms of imprisonment at seven years for each count (Order). The Order failed to specify Coulter's level of punishment and the significant criteria upon which his minimum decision was based, as required by Section III of the HPA's 1989 Guidelines for Establishing Minimum Terms of Imprisonment (Guidelines).

On August 21, 2003, Coulter, pro se, filed his Rule 40 Petition, in which he alleged:

Ground One: He did not receive timely notice of the March 11, 2003 hearing; he was not allowed to submit documents and letters to correct errors in his Presentence Report and the HPA did not allow him to be properly heard when it set his minimum hearing prior to receiving these items; he was not interviewed for a personality evaluation to determine his propensity toward criminal activity; the HPA did not have a complete report regarding his life prior to incarceration, his progress while incarcerated, or a personality evaluation; he was not allowed to review nor was he given a copy of HPA's "2001 Guidelines"^{2/} prior to his hearing; and the HPA failed to follow its Guidelines when it set his minimum terms.

Ground Two: The HPA failed to follow its Guidelines when it set Coulter's minimum terms because it failed to set forth in the Order his level of punishment and failed to provide him with the written criteria upon which the HPA based its decision; and he should have been given a Level I or Level II punishment instead of a Level III.

Ground Three: The HPA violated his statutory rights under HRS §§ 353-62 and 353-64 when it failed to consider him for parole.

^{2/} The Hawai'i Paroling Authority's Guidelines for Establishing Minimum Terms of Imprisonment were promulgated in 1989; no other guidelines exist. The "2001 Guidelines" to which Coulter refers is a chapter from proposed policies and procedures not adopted by the paroling authority and not used by the paroling authority in setting minimum terms of imprisonment.

Ground Four: The HPA denied him equal protection of law when it failed to treat him equally with other inmates who had been convicted for similar crimes and had similar criminal histories and backgrounds, and the HPA failed to conduct a hearing pursuant to Hawai'i Administrative Rules (HAR) Rule 23 or set his minimum terms based upon the guidelines in HAR Rule 23.

Ground Five: The HPA denied him equal protection of law when, in setting his minimum terms of imprisonment, it failed to treat him equally with other inmates similarly situated.

The State filed an answer on September 19, 2003 and a supplemental answer on December 4, 2003 to the Rule 40 Petition, and Coulter filed replies to both answers.

On December 31, 2003, the HPA, sua sponte and without holding a hearing, issued an amended Notice and Order of Fixing Minimum Term(s) of Imprisonment (Amended Order). Id. at 157 The HPA set Coulter's minimum terms at seven years for each count, the level of punishment at Level III, and identified the significant factors used in determining Coulter's level of punishment as the nature of the offense and the degree of injury/loss to person.

On June 23, 2004, the circuit court appointed the Office of the Public Defender to represent Coulter.

On August 24, 2004, the State filed the Declaration of Tommy Johnson, the Administrator of the HPA, in support of its

answer and attached a copy of the Amended Order. On that same day, the circuit court held a hearing on the Rule 40 Petition. Counsel for Coulter and the State stipulated into evidence, with the court's approval, all exhibits attached to all documents previously filed by both parties, as well as the declarations included in the motions. Coulter's counsel adduced evidence that at Coulter's March 11, 2003 minimum hearing, the 1989 Guidelines were in effect, HPA Chair Tiwanak and Member Garcia were the only board members present, and Successor Chair Tufono was not present. The State offered into evidence, with no objection by defense, a copy of the audiotape of the March 11 hearing.

On November 29, 2004, the circuit court denied Coulter's Rule 40 Petition.

On appeal, Coulter contends the circuit court erred in denying his Rule 40 Petition by wrongly concluding that

(1) his constitutional rights to due process and equal protection were not violated when the March 11, 2003 Board's minimum determinations were arbitrarily and capriciously issued without specifying the level of punishment and significant criteria upon which those minimum decisions were based, and those minimums were arbitrarily and capriciously rubber-stamped by the December 31, 2003 Board without a hearing; and

(2) the December 31, 2003 Board properly followed its 1989 Guidelines in identifying Coulter as a Level III offender.

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 that Coulter's contentions are without merit. The circuit court did not err in concluding that Coulter failed to prove facts sufficient to justify relief on any of his claims. Furthermore, the HPA did not abuse its discretion nor violate the constitutional rights of Coulter, in setting Coulter's minimum terms of imprisonment. Williamson v. Hawaii Paroling Authority, 97 Hawai'i 183, 195, 35 P.3d 210, 222 (2001).

Therefore,

The Findings of Fact, Conclusions of Law, and Order Denying Petition for Post-Conviction Relief filed on November 29, 2004 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, January 5, 2007.

On the briefs:

Phyllis J. Hironaka,
Deputy Public Defender,
for Petitioner-Appellant.

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


Chief Judge


Associate Judge


Associate Judge