

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27885

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'IMARTIN B. RICHARDSON, Petitioner-Appellant, v  
STATE OF HAWAI'I, Respondent-AppelleeNORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAI'I

2007 OCT 25 AM 8:15

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(S.P.P. NO. 05-1-0062 (Cr. No. 02-1-1290))SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Martin B. Richardson (Richardson) appeals from the "Findings of Fact, Conclusions of Law, and Order Denying Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody" filed on March 23, 2006 in the Circuit Court of the First Circuit<sup>1/</sup> (circuit court). Richardson filed his Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody (Rule 40 Petition) on October 4, 2005 pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 40.

In the underlying criminal case, Richardson entered a plea of guilty to Robbery in the Second Degree, in violation of Hawaii Revised Statutes (HRS) § 708-841(1)(a) (1993). The circuit court sentenced him to ten years of imprisonment and filed its Judgment on November 21, 2002. On February 5, 2003, Richardson moved to withdraw his guilty plea and for reconsideration of his sentence. The circuit court entered its order denying the motion for reconsideration on March 13, 2003.

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<sup>1/</sup> The Honorable Michael D. Wilson presided.

However, on April 16, 2003, the circuit court allowed Richardson to withdraw his plea.

On August 8, 2003, Richardson entered a plea of no contest to the Robbery in the Second Degree charge. The circuit court sentenced Richardson to five years of probation, with special conditions, and ordered him to pay restitution. The circuit court entered its Judgment on October 29, 2003. Richardson did not appeal from the October 29, 2003 Judgment.

On June 15, 2004, the State of Hawai'i (State) moved to revoke Richardson's probation for failure (1) to report to his probation officer, (2) to remain arrest free and to report any arrest to his probation officer, (3) to pay restitution, (4) to remain in a drug treatment program, and (5) to obtain domestic violence intervention. On March 9, 2005, the circuit court revoked Richardson's probation and sentenced him to ten years of imprisonment. On July 29, 2005, Richardson filed a Motion for Reconsideration of Revocation of Probation, which the circuit court summarily denied on that same date. Richardson did not appeal from the denial of his motion for reconsideration.

On September 2, 2005, Richardson's counsel for his plea and sentencing (Counsel) moved to withdraw, stating that it was necessary for Richardson to pursue post-judgment relief based, inter alia, on the issue of ineffective assistance of counsel. Counsel attached to the motion his declaration (Counsel's Declaration), in which he outlined his ineffectiveness. The circuit court granted the motion.

Richardson attached Counsel's Declaration to his Rule 40 Petition as the supporting facts to his ineffective assistance of counsel claim. In that declaration, Counsel stated that he had failed:

(1) to object when the State asked at sentencing that zero tolerance be ordered for any probation violation;

(2) to investigate Richardson's case other than to read police reports;

(3) to interview the complaining witness and another percipient witnesses listed in the police reports;

(4) to determine the extent of Richardson's alcohol addiction and total lack of family or other support and to thus ask for special consideration and assistance for Richardson;

(5) to advise Richardson to go to trial where Richardson might have been acquitted or convicted of a lesser offense;

(6) to memorialize for use at a probable revocation hearing a telephone conversation with Richardson's substance abuse counselor that Richardson's stay at the residential treatment center was too short to be effective;

(7) to ask the circuit court to hold Richardson's probation officer in contempt for failing to respond to a subpoena; and

(8) to make sure that a second mental health evaluation of Richardson had been completed prior to the revocation hearing.

The only issue Richardson argues on appeal is that Counsel was ineffective for failing to interview witnesses. Richardson did not provide an affidavit or sworn statement describing the testimony of the witnesses Counsel neglected to interview. Therefore, Richardson failed to establish that any error or omission by Counsel resulted in either the withdrawal or substantial impairment of a potentially meritorious defense. State v. Antone, 62 Haw. 346, 615 P.2d 101 (1980).

Therefore,

The "Findings of Fact, Conclusions of Law, and Order Denying Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody" filed on March 23, 2006 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, October 25, 2007.

On the briefs:

Martin B. Richardson,  
Petitioner-Appellant pro se.

Brian R. Vincent,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for Respondent-Appellee.



Chief Judge



Associate Judge



Associate Judge