

NO. 22964

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

BENJAMIN JAVIER, Petitioner-Appellant,

vs.

STATE OF HAWAI'I, Respondent-Appellee.

APPEAL FROM THE FIFTH CIRCUIT COURT
(S.P.P. NO. 99-0003)
(CR. NO. 92-0187)

SUMMARY DISPOSTIION ORDER

(By: Moon, C.J., Levinson, Nakayama, Ramil, and Acoba, JJ.)

Petitioner-appellant Benjamin Javier appeals from the October 27, 1999 order of the Fifth Circuit Court, the Honorable George Masuoka presiding, denying his Hawai'i Rules of Penal Procedure (HRPP) Rule 40 petition [hereinafter, Rule 40 petition] for post-conviction relief without a hearing. Javier claims the circuit court erred by ruling that: (1) his grievances were not properly brought under HRPP Rule 40; (2) the Hawai'i Paroling Authority (HPA) had the authority to issue a second and different minimum term of imprisonment lengthening his ineligibility for parole; and (3) he was not denied effective assistance of counsel.

Upon carefully reviewing 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 that:

(1) The circuit court erred in concluding that the Rule 40 Petition was an inappropriate vehicle for challenging the mandatory minimum terms of imprisonment fixed by the HPA. In

Williamson v. Hawai'i Paroling Authority, 97 Hawai'i 183, 195, 35 P.3d 210, 222 (2001), this court held that "judicial intervention [in the form of a post-conviction relief] is appropriate where the HPA has failed to exercise any discretion at all, acted arbitrarily and capriciously so as to give rise to a due process violation, or otherwise violated the prisoner's constitutional rights". Id. (upholding that portion of the ICA's decision stating that a Rule 40 petition is an appropriate means for an inmate to challenge the minimum term of imprisonment set by the HPA). When the HPA amended its order fixing Javier's minimum terms of imprisonment, it effectively prolonged Javier's ineligibility for release on parole. Therefore, the question whether such action by the HPA was arbitrary and without statutory authority was properly brought under an HRPP Rule 40 petition;

(2) Nevertheless, the circuit court correctly concluded that the HPA has the authority to timely correct errors resulting from inadvertence or mistake. Although the relevant statute authorizing the HPA to fix a prisoner's minimum term of imprisonment is silent as to whether the agency can correct its mistakes, we conclude that the legislature had the "apparent intent to confer wide discretion upon the HPA." Id. at 16. Had the legislature intended to restrict the HPA's ability to correct its errors, it would have expressly done so. Because the sentencing court ordered that Javier serve three consecutive sentences for the crimes of which he was convicted, it would lead to an absurd result if the HPA was restricted from amending its order to reflect the consecutive nature of Javier's sentence. In enacting its statutes, the legislature is presumed not to intend an absurd result, and we therefore construe the relevant statute so as to avoid any inconsistency and illogicality. See State v.

Arceo, 84 Hawai'i 1, 19, 928 P.2d 843, 861 (1996) (citation and internal quotation marks omitted); and

(3) Javier's claim of ineffective assistance of counsel is without merit. Javier has failed to show that, "viewed as a whole, the assistance provided [was not] within the range of competence demanded of attorneys in criminal cases." Dan v. State, 76 Haw. 423, 427, 879 P.2d 528, 532 (1994) (citations and internal quotation marks omitted). Therefore,

IT IS HEREBY ORDERED that the order denying Javier's Rule 40 petition without a hearing is affirmed.

DATED: Honolulu, Hawai'i, May 6, 2002.

On the briefs:

Benjamin Javier,
petitioner-appellant,
appearing pro se

Lisa M. Itomura,
Deputy Attorney General,
for respondent-appellee