

## UNITED STATES DISTRICT COURT

## DISTRICT OF HAWAII

ALBERT IAN SCHWEITZER,

Plaintiff,

vs.

STATE OF HAWAII, TODD THOMAS,  
WARDEN OF SAGUARO CORRECTIONAL  
CENTER - ELOY, ARIZONA; AND TED  
SAKAI, DIRECTOR OF PUBLIC  
SAFETY, STATE OF HAWAI'I;

Defendants.

CIV. NO. 05-00065 LEK-KJM

**ORDER LIFTING STAY AND DISMISSING THE SECOND AMENDED PETITION**

January 31, 2005, Petitioner Albert Ian Schweitzer ("Schweitzer"), proceeding *pro se*, filed a Petition Under 28 USC § 254 for Writ of Habeas Corpus by a Person in State Custody ("Petition"). [Dkt. no. 1.] On March 9, 2005, Schweitzer filed his Amended Petition. [Dkt. no. 4.] On May 20, 2005, he filed an addenda to the Amended Petition. [Dkt. no. 12.] The Amended Petition and the addenda were construed collectively as Schweitzer's second amended petition ("Second Amended Petition"). See Order to Show Cause and Answer Second Amended Petition, filed 6/16/05 (dkt. no. 14).

On March 13, 2006, this case was stayed to allow Schweitzer, who was represented by counsel at that point, to present the unexhausted claims in the Second Amended Petition to

a state court through a Hawai`i Rules of Penal Procedure Rule 40 petition. See Order Staying Petition, filed 3/13/06 (dkt. no. 37). On January 4, 2007, the case was administratively closed. [Order Directing the Clerk of Court to Administratively Close this Case, filed 1/4/07 (dkt. no. 42).] On January 26, 2017, Schweitzer informed this Court that he filed a Rule 40 petition in state court. See Petitioner Albert Ian Schweitzer's State of Hawaii Rule 40 Petition for Post-Conviction Relief, filed 1/26/17 (dkt. no. 84) (with petition filed in Schweitzer v. State of Hawai`i, Case No. S.P.P. 17-1-0002, on 1/17/17 in the State of Hawai`i Third Circuit Court).

The state court, in a separate proceeding, vacated Schweitzer's conviction and dismissed the criminal case against him. See Schweitzer v. State of Hawai`i, Case No. 3CSP 23-0000003 (Circuit Court of the Third Circuit, Hilo Division, State of Hawai`i), Findings of Fact, Conclusions of Law Granting Petition to Vacate, Set Aside, and Correct Judgment, and to Release Petitioner Albert Ian Schweitzer from Custody, filed 10/20/23 (dkt. no. 117) ("10/20/23 State Court Decision").

On March 20, 2024, this Court issued an entering order informing the parties that it was inclined to dismiss the Second Amended Petition as moot. [Dkt. no. 100.] No objection to this Court's inclination was filed. There being no objection, this Court concludes that Schweitzer's Second Amended Petition is

moot in light of the 10/20/23 State Court Decision. This Court therefore LIFTS the stay and DISMISSES the Second Amended Petition.

This Court DIRECTS the Clerk's Office to close this case on **April 24, 2024** unless a timely motion for reconsideration of this Order is filed.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, April 9, 2024.



/s/ Leslie E. Kobayashi  
Leslie E. Kobayashi  
United States District Judge

**ALBERT IAN SCHWEITZER VS. STATE OF HAWAII, ET AL; CV 05-00065**  
**LEK-KJM; ORDER LIFTING STAY AND DISMISSING THE SECOND AMENDED**  
**PETITION**