

NO. 27257

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

JAMES T. SHIPMAN, Petitioner-Appellant, v.
STATE OF HAWAI'I, Respondent-Appellee

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P.P. NO. 05-1-0003 (Cr. No. 97-2556))

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant James T. Shipman (Shipman) appeals from the "Order Denying Petition for Post-Conviction Relief Without a Hearing and Order Denying Petitioner's Motion for Appointment of Counsel" filed on February 23, 2005 in the Circuit Court of the First Circuit^{1/} (circuit court). Shipman filed his Petition for Post-Conviction Relief (Rule 40 Petition) on January 7, 2005 pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 40.

In 1998, Shipman pleaded guilty to Terroristic Threatening in the First Degree, in violation of Hawaii Revised Statutes (HRS) § 707-716(1)(d) (1993), and Assault in the Second Degree, in violation of HRS § 707-711(1)(d) (1993). The circuit court sentenced Shipman to probation for two concurrent terms of five years and to a term of imprisonment of 146 days, with credit

^{1/} The Honorable Marcia J. Waldorf presided.

for time served. The circuit court revoked Shipman's probation on March 15, 2000, August 8, 2001, and October 29, 2001. After revoking Shipman's probation for the fourth time, on August 2, 2004, the circuit court resentenced him to imprisonment for two concurrent terms of five years. Shipman did not file an appeal from his sentence. In January 2005, Shipman filed his Rule 40 Petition, and the circuit court denied the petition without a hearing.

On appeal, Shipman contends the circuit court erred when it denied his Rule 40 Petition because:

(1) The circuit court earlier violated the constitutional prohibition against double jeopardy when the court revoked his initial sentence of probation and imposed a new sentence of imprisonment. Shipman asserts that he received two separate punishments for a single criminal conviction in violation of double jeopardy.

(2) His sentence was the result of the ineffective assistance of his trial counsel because his trial counsel (a) failed to assert an objection against the circuit court's violation of double jeopardy and (b) failed to point out alleged errors in his presentence report.

(3) The circuit court denied his Rule 40 Petition without holding a hearing.

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 resolve Shipman's points of error as follows:

(1) The circuit court did not violate the constitutional prohibition against double jeopardy when the circuit court revoked Shipman's initial sentence of probation and imposed a sentence of imprisonment. State v. Correa, 69 Haw. 407, 744 P.2d 84 (1987). The circuit court sentenced Shipman to probation subject to certain conditions, and, when Shipman violated the conditions, the circuit court was authorized to impose imprisonment for Shipman's conviction.

(2) Shipman failed to show "1) that there were specific errors or omissions reflecting counsel's lack of skill, judgment, or diligence; and 2) that such errors or omissions resulted in either the withdrawal or substantial impairment of a potentially meritorious defense." State v. Wakisaka, 102 Hawai'i 504, 514, 78 P.3d 317, 327 (2003).

(3) The record shows that Shipman's allegations showed no colorable claim, and, thus, the circuit court did not err by denying Shipman's Rule 40 Petition without holding a hearing. HRPP Rule 40(f); State v. Allen, 7 Haw. App. 89, 92-93, 744 P.2d 789, 792-93 (1987), overruled in part on other grounds, Dan v. State, 76 Hawai'i 423, 427, 879 P.2d 528, 532 (1994).

Therefore,

The "Order Denying Petition for Post-Conviction Relief Without a Hearing and Order Denying Petitioner's Motion for Appointment of Counsel" filed on February 23, 2005 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, May 25, 2006.

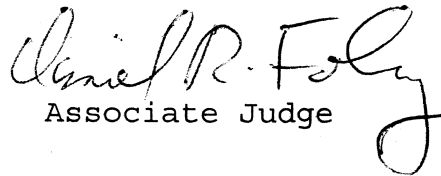
On the briefs:

James T. Shipman,
Petitioner-Appellant pro se.

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



Acting Chief Judge



Associate Judge



Associate Judge