

NO. 28176

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

IN RE HUTCH RULE 40

EM. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2006 DEC 27 AM 11:49

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CV. NO. 06-1-RULE 40)

ORDER GRANTING RESPONDENT-APPELLEE STATE OF HAWAII'S
DECEMBER 8, 2006 MOTION TO DISMISS
PETITIONER-APPELLANT EUGENE HUTCH'S APPEAL
(By: Burns, C.J., Lim and Foley, JJ.)

Upon our review of (1) Respondent-Appellee State of Hawaii's (Appellee State) December 8, 2006 motion to dismiss Petitioner-Appellant Eugene Hutch's (Appellant Hutch) appeal based on mootness, (2) the failure of Appellant Hutch to file any memorandum in opposition to Appellee State's December 8, 2006 motion to dismiss, and (3) the record, it appears that the Appellee State's December 8, 2006 motion to dismiss has merit.

The mootness doctrine is appropriate where events subsequent to the judgment of the trial court have so affected the relations between the parties that the two conditions for justiciability relevant on appeal - adverse interest and effective remedy - have been compromised. . . . A case is moot if it has lost its character as a present, live controversy of the kind that must exist if courts are to avoid advisory opinions on abstract propositions of law. . . .

. . . [T]he duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.

Mahiai v. Suwa, 69 Haw. 349, 354-55, 742 P.2d 359, 365 (1987)

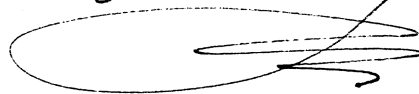
NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

(citations, internal quotation marks, and original brackets omitted). All of the issues in this appeal relate to the conditions of Appellant Hutch's confinement. Appellee State's supporting declaration shows that Appellant Hutch has served his sentence and that the Halawa Correctional Facility has released Appellant Hutch from custody. Appellant Hutch does not refute Appellee State's supporting declaration. Therefore, the issues in Appellant Hutch's appeal are now moot. Accordingly,

IT IS HEREBY ORDERED that Appellee State's December 8, 2006 motion to dismiss is granted, and this appeal is dismissed as moot.

DATED: Honolulu, Hawai'i, December 27, 2006.

James A. Burns
Chief Judge



Associate Judge

Amel R. Foley
Associate Judge