

NO. 22517

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

JOSEPH BAXA, Petitioner-Appellant

vs.

STATE OF HAWAI'I, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(S.P. NO. 99-0057)

SUMMARY DISPOSITION ORDER

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

Petitioner-appellant Joseph Baxa appeals from the circuit court's judgment in a civil case in favor of respondent-appellee the State of Hawai'i. Baxa originally filed a petition for post-conviction relief under Hawai'i Rules of Penal Procedure (HRPP) Rule 40 in which he alleged that the Hawai'i Paroling Authority (HPA) violated his rights by setting his minimum term of imprisonment at a period equal to his maximum sentence. On appeal, Baxa argues that the circuit court erred in: 1) processing his Rule 40 petition as a civil complaint; and 2) dismissing his complaint for failure to state a claim upon which relief could be granted.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments made and the issues raised by the parties, we resolve petitioner-appellant's arguments as follows: (1) insofar as Baxa's petition alleged illegality of custody, the circuit court erred in treating his HRPP Rule 40 petition as a civil complaint; see HRPP Rule 40(c)(3) ("If a post-conviction petition alleges neither illegality of judgment nor illegality of post-conviction 'custody' or 'restraint' . . . , the court shall treat the pleading as a civil complaint not governed by this rule."); and (2) such error was harmless because Hawai'i Revised Statutes

§ 706-669 (1993) does not entitle any convicted person to have his minimum term of imprisonment set for a shorter period of time than the maximum possible sentence.

THEREFORE, IT IS HEREBY ORDERED that the circuit court's judgment is affirmed.

DATED: Honolulu, Hawai'i, November 6, 2000.

On the briefs:

Joseph Baxa, petitioner-
appellant pro se

Bryan C. Yee, Deputy
Attorney General, for
respondent-appellee