

*** NOT FOR PUBLICATION ***

NO. 24419

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

EUGENE J. HUTCH, Petitioner-Appellant

vs.

STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE FIRST CIRCUIT COURT
(S.P.P. NO. 01-1-0011)

SUMMARY DISPOSITION ORDER

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

Petitioner-appellant Eugene James Hutch appeals from the July 5, 2001 order of the circuit court of the first circuit, the Honorable Karen S.S. Ahn presiding, dismissing and denying Hutch's petition for post-conviction relief. On appeal, Hutch argues that the circuit court erred by denying his petition without a hearing.

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, we hold that the circuit court did not err by denying Hutch's HRPP Rule 40 petition without a hearing because: (1) Hutch's arguments that he did not understand his guilty plea and that HAR Rule 17-202-1(b) (repealed 2000) is unconstitutional was previously ruled upon; and (2) Hutch's argument that the Parole Board violated HRS § 706-670(1) (1993)¹ is frivolous without support, inasmuch as

¹ HRS § 706-670(1) provides in relevant part:

[a] person sentenced to an indeterminate term of imprisonment shall receive an initial parole hearing at least one month before the expiration of the minimum term of imprisonment If parole is not granted at that time, additional hearings shall be held at twelve-month intervals

(continued...)

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Hutch was recommitted after revocation of parole, and, thus, HRS § 706-670(1) is inapplicable. Therefore,

IT IS HEREBY ORDERED that the judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, December 18, 2003.

On the briefs:

Eugene J. Hutch,
petitioner-appellant
pro se

Donn Fudo, Deputy
Prosecuting Attorney,
for respondent-appellee
State of Hawai'i

¹(...continued)
or less until parole is granted or the maximum period of imprisonment expires.