

NO. 26259

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

RICHARD LOUIS ADAM, Defendant-Appellant

APPEAL FROM THE THIRD CIRCUIT COURT
(CR. NO. 99-0019K)

ORDER

(By: Acoba, J.)

Upon consideration of Defendant-Appellant Richard Adam's "motion for reconsideration of this court's order denying to hear my pro se motion to annul judgment due to tampered transcripts and/or leave to pursue my Rule 40 petition because of attorney of record," the papers in support, and the records and files herein, it appears that: (1) Appellant filed a notice of appeal in this matter without the assistance of counsel; (2) on February 20, 2004, Appellant moved for appointment of attorney Shawn Luiz as his attorney for this appeal; (3) this court remanded the case to the third circuit court to determine whether Appellant qualified for court-appointed counsel; (4) the circuit court found Appellant qualified for a court-appointed attorney and appointed attorney Shaw Luiz to represent Appellant in this appeal; (5) this appeal is fully briefed and ready for assignment; (6) Appellant, proceeding pro se, filed a motion to annul the judgment and/or for leave to file a Rule 40 petition during the appeal; (7) the court denied the motion because Appellant is represented by counsel and all requests for relief must be filed by counsel of record, See Martinez v. Court of Appeal of California, Fourth Appellate District, 528 U.S. 152 (2000) (there is no constitutional right for self-representation on appeal from a criminal conviction); (8) Appellant, proceeding

pro se, moves for reconsideration alleging he has new evidence that must be presented in a Rule 40 petition and his attorney does not want to file a Rule 40 petition; and (9) review of court records shows that Appellant filed a HRPP Rule 40 petition for post conviction relief in the circuit court on February 3, 2003, and that petition remains pending. Therefore,

IT IS HEREBY ORDERED that the motion for reconsideration is denied.

DATED: Honolulu, Hawai'i, November 18, 2004.

Richard Adam, defendant-appellant, on the motion.