

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

JAIME ARENAS, Petitioner-Appellant,

vs.

STATE OF HAWAI'I, Respondent-Appellee.

APPEAL FROM THE FIRST CIRCUIT COURT
(S.P.P. NO. 99-0009 (CR. NO. 96-1157))

SUMMARY DISPOSITION ORDER

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

Petitioner-appellant Jaime Arenas appeals from the order of the Circuit Court of the First Circuit, the Honorable Marie N. Milks presiding, denying his Hawai'i Rules of Penal Procedure (HRPP) Rule 40 (1999)¹ petition for post-conviction

¹ HRPP Rule 40 provides in pertinent part:

(a) **Proceedings and Grounds.** The post-conviction proceeding established by this rule shall encompass all common law and statutory procedures for the same purpose, including habeas corpus and coram nobis; provided that the foregoing shall not be construed to limit the availability of remedies in the trial court or on direct appeal. Said proceeding shall be applicable to judgments of conviction and to custody based on judgments of conviction, as follows:

(1) From Judgment. At any time but not prior to final judgment, any person may seek relief under the procedure set forth in this rule from the judgment of conviction, on the following grounds:

(i) that the judgment was obtained or sentence imposed in violation of the constitution of the United States or of the State of Hawai'i;

(ii) that the court which rendered the judgment was without jurisdiction over the person or the subject matter;

(iii) that the sentence is illegal;

(continued...)

relief. On appeal, Arenas argues that the circuit court erred by: (1) applying the wrong standard in denying his claim of ineffective assistance of counsel; (2) not allowing him to clarify his petition under HRPP Rule 40(e) (1999);² and (3) charging him filing fees.

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: (1) denial of Arenas' HRPP Rule 40 petition was governed by HRPP Rule 40(g) (1999),³ thus, the circuit court did not err in dismissing Arenas' petition without articulating or applying HRPP Rule 40(f); (2) unlike the circumstances in Garringer v. State, 80 Hawai'i 327, 909 P.2d 1142 (1996), the circuit court in the

¹(...continued)

(iv) that there is newly discovered evidence; or
(v) any ground which is a basis for collateral attack on the judgment.

² HRPP Rule 40(e) states, "The court may grant leave to amend or withdraw the petition at any time. Amendment shall be freely allowed in order to achieve substantial justice. No petition shall be dismissed for want of particularity unless the petitioner is first given an opportunity to clarify the petition."

³ HRPP Rule 40(g) provides in pertinent part:

Disposition.

. . . .

(2) Against the Petitioner. The court may dismiss a petition at any time upon finding the petition is patently frivolous, the issues have been previously raised and ruled upon, or the issues were waived. The court may deny a petition upon determining the allegations and arguments have no merit.

instant case was not required to allow Arenas to amend his petition because Arenas' petition included a specific factual allegation and the evidence that he believed demonstrated his trial counsel's ineffectiveness; (3) Arenas' argument regarding filing fees was waived because he failed to raise this argument before the circuit court. Therefore,

IT IS HEREBY ORDERED that the July 14, 1999 order denying petitioner's petition for post-conviction relief is affirmed.

DATED: Honolulu, Hawai'i, May 17, 2002.

On the briefs:

Jaime Arenas,
petitioner-appellant,
appearing pro se

Bryan K. Sano,
Deputy Prosecuting Attorney,
for respondent-appellee