

NO. 23203

IN THE SUPREME COURT OF THE STATE OF HAWAII

DANIEL CUNNINGHAM, Petitioner-Appellant,

vs.

STATE OF HAWAII, Respondent-Appellee.

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT COURT
(CASE NO. CTR-1 OF 10/6/94)

SUMMARY DISPOSITION ORDER

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

The petitioner-appellant Daniel Cunningham appeals from the order of the district court of the first circuit, the Honorable Karen S.S. Ahn presiding, denying his second petition to vacate, set aside, or correct the judgment convicting him of and sentencing him for harassment, in violation of Hawaii Revised Statutes (HRS) § 711-1106(1)(a) (1993).

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 by the parties, we affirm the order of the district court denying Cunningham's petition. Assuming, arguendo, that Cunningham is not procedurally barred from raising the arguments he advances in the present appeal and has not otherwise waived his right to raise them, his arguments are without merit because they are based on an erroneous reading of In re John Doe, Born on January 5, 1976, 76 Hawaii 85, 869 P.2d 1304 (1994). In Doe, we noted that police officers are trained to remain calm in the face of verbal

harassment and therefore held that the prosecution had failed to prove that the verbal harassment for which the minor in that case was charged with violating HRS § 711-1106(1)(b) (1985) was likely to provoke a violent response in a police officer. Doe, 76 Hawai i at 100, 869 P.2d at 1319. In the present matter, however, the district court convicted Cunningham on the basis of conduct that constituted a violation of HRS § 711-1106(1)(a), specifically, his offensive physical contact with a police officer. Doe is therefore inapposite to this case and there is no merit to Cunningham's argument that a police officer is not a proper complainant pursuant to HRS § 711-1106(1)(a). See, e.g., Commentary on HRS § 711-1101 (1993) at 291 n.1 ("[a]n individual police officer may . . . be the object of harassment under § 711-1106"). Consequently, the district court correctly denied appellant's HRPP Rule 40 petition. Therefore,

IT IS HEREBY ORDERED that the district court's order from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai i, September 20, 2001.

On the briefs:

Daniel Cunningham,
petitioner-appellant,
pro se

James M. Anderson, Deputy
Prosecuting Attorney, for
the respondent-appellee
State of Hawai i