

NO. 23420

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

DANIEL BOHARSKI, Petitioner-Appellant

vs.

STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE FIRST CIRCUIT COURT
(S.P.P. NO. 99-1-0006 (CR. NO. 98-2571))

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Daniel Boharski appeals the first circuit court's denial of his Hawai'i Rules of Penal Procedure (HRPP) Rule 40 petition without a hearing, the Honorable Wilfred Watanabe presiding. On appeal, Boharski argues that: (1) his change of plea to nolo contendere was not voluntary; (2) the trial court failed to provide a "full and fair evidentiary hearing" on his Rule 40 petition; and (3) he was not represented on his petition.

Upon careful review of 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 hold that because the trial court had no duty to inform Boharski of a collateral, rather than direct, consequence of his nolo contendere plea, and thus, Boharski failed to present a colorable

claim, the circuit court's order was proper. In State v. Nguyen, 81 Hawai'i 279, 916 P.2d 689 (1996), this court specified that "[c]ourts need not inform defendants prior to accepting their guilty or nolo contendere pleas about every conceivable collateral effect that a conviction might have," and also identified a collateral consequence as a "result peculiar to the individual's personal circumstances and one not within the control of the court system." 81 Hawai'i at 287-88, 916 P.2d at 697-98 (emphases added). Thus, the court is not obligated to inform a defendant of the Hawai'i Paroling Authority's ability to make a parole eligibility determination, since such a decision by the HPA is a collateral, rather than a direct consequence of a defendant's plea.

We further hold that since Boharski's Rule 40 petition alleged only that the trial court failed to inform him of the possibility that the HPA may modify his mandatory minimum sentence, the court properly denied Boharski's petition since the truth of such an allegation does not entitle Boharski to relief, based on the analysis above.

Finally, we hold that since Boharski's Rule 40 petition failed to present a colorable claim, he was not entitled to court-appointed counsel. See Dan v. State, 76 Hawai'i 423, 879 P.2d 528 (1994).

IT IS HEREBY ORDERED that the order of the circuit court from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, February 12, 2002.

On the briefs:

Daniel Boharski,
Petitioner-Appellant,
pro se

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State of Hawai'i