

NO. 23533

IN THE SUPREME COURT OF THE STATE OF HAWAII

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WILLIAM JAMES JONES, Petitioner-Appellant,

vs.

STATE OF HAWAII, Respondent-Appellee.

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APPEAL FROM THE FIRST CIRCUIT COURT  
(S.P.P. NO. 98-0054 (CR. NO. 95-1384))

SUMMARY DISPOSITION ORDER

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

Petitioner-appellant William James Jones appeals from the June 7, 2000 order of the Circuit Court of the First Circuit, the Honorable Victoria S. Marks presiding, denying his Hawai'i Rules of Penal Procedure (HRPP) Rule 40 (2000) petition for post-conviction relief. On appeal, Jones argues that the circuit court erred by: (1) ruling that his petition raised issues previously raised and ruled upon or were waived; and (2) failing to address the alleged factual basis of his claim that his counsel was ineffective.

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: (1) Jones waived the particular claim of ineffective assistance of

trial counsel raised in his HRPP Rule 40 petition because the factual basis of this claim was previously raised on direct appeal, clearly demonstrating that Jones could have raised this issue in a prior proceeding; (2) an HRPP Rule 40 petition was appropriate to address Jones' claim of ineffective assistance of appellate counsel because this issue could not have been addressed in a prior proceeding; and (3) inasmuch as appellate counsel argued that the prosecution relied upon the same conduct, i.e., the same facts, to prove both kidnapping and sexual assault in the first degree, the circuit court correctly determined that Jones' allegation of ineffective assistance of appellate counsel is without merit. Therefore,

IT IS HEREBY ORDERED that the June 7, 2000 order of the circuit court denying Jones' petition for post-conviction relief is affirmed.

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

On the briefs:

Earle A. Partington,  
for petitioner-appellant

Mangmang Qiu Brown,  
Deputy Prosecuting Attorney,  
for respondent-appellee