

NO. 24345

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

RODNEY K. LOGAN, Petitioner-Appellant,

vs.

STATE OF HAWAI'I, Respondent-Appellee.

APPEAL FROM THE FIRST CIRCUIT COURT
(S.P.P. NO. 00-1-0002)

SUMMARY DISPOSITION ORDER

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

Petitioner-appellant Rodney Logan appeals from the first circuit court's May 4, 2001 order denying Logan's Hawai'i Rules of Penal Procedure (HRPP) Rule 40 petition for post-conviction relief.¹ On appeal, Logan contends that the circuit court erred by dismissing his petition as frivolous, specifically arguing that the circuit court erred by failing to inquire into his claim of ineffective assistance of counsel.

Upon carefully reviewing the record and the briefs submitted by the parties, and having given due consideration to the arguments advocated and the issues raised, we hold that the circuit court did not err in denying Logan's petition. Specifically, we hold that: (1) Logan's claim that the prosecution failed to disclose favorable evidence (a photograph of the crime scene) is without merit. The photograph was made

¹ The Honorable Dexter D. Del Rosario presided over this matter.

available to Logan's counsel prior to trial. Furthermore, at trial, Logan's counsel had the opportunity to voir dire the police officer testifying as to the foundation for and contents of this photograph before the photograph was admitted into evidence and then cross-examine the police officer after the photograph was admitted into evidence; (2) Logan's claim that the evidence was insufficient to support a conviction is without merit. Viewing the evidence in a light most favorable to the prosecution, there is sufficient evidence to support Logan's conviction because two witnesses testified that Logan's hand was in or near the complainant's purse. This testimony is sufficient for a reasonable jury to conclude that Logan intentionally engaged in conduct which, under the circumstances, constituted a substantial step in a course of conduct intended to culminate in the theft of property from the complainant's person. See State v. Martinez, 101 Hawai'i 332, 338, 68 P.3d 606, 612 (2003); (3) Logan's claim of ineffective assistance of trial counsel is without merit. Logan claims that his trial counsel was ineffective because she failed to interview one or more employees from Oahu Transit Services as to whether the bus driver could have watched Logan while operating a bus. However, Logan did not submit sworn statements from any Oahu Transit Services personnel indicating that, had they testified, they would have provided testimony favorable to Logan's case. Therefore, Logan's

assertions that (a) there exists an employee of Oahu Transit Services who could have provided testimony on this matter, and (b) this employee would have provided evidence favorable to Logan, are purely speculative and are insufficient to satisfy Logan's burden of proving ineffective assistance of counsel. See State v. Fukusaku, 85 Hawai'i 462, 481, 946 P.2d 32, 51 (1997). Logan also claims that his trial counsel was ineffective because she failed to "inquire[] into the photographs that were submitted into evidence by the prosecution." However, Logan did not present this argument to the circuit court in his HRPP Rule 40 petition. "As a general rule, if a party does not raise an argument at trial, that argument will be deemed to have been waived on appeal; this rule applies in both criminal and civil cases." State v. Moses, 102 Hawai'i 449, 456, 77 P.3d 940, 947 (2003), recons. denied, 103 Hawai'i 61, 79 P.3d 679 (2003). By failing to raise this issue in his HRPP Rule 40 petition, Logan has waived this issue on appeal; and (4) Logan's claim of ineffective assistance of appellate counsel is without merit. A Rule 40 petitioner "must establish 'that (1) his appellate counsel omitted an appealable issue, and (2) in light of the entire record, the status of the law, and the space and time limitations inherent in the appellate process, a reasonably competent attorney would not have omitted that issue.'" Garringer v. State, 80 Hawai'i 327, 336, 909 P.2d 1142, 1151

(1996) (quoting Domingo v. State, 76 Hawai'i 237, 242, 873 P.2d 775, 780 (1994)). Logan's appellate counsel's illness does not, by itself, give rise to a claim of ineffective assistance of counsel. Logan argues that his appellate counsel omitted two appealable issues: insufficiency of the evidence and ineffective assistance of trial counsel. However, even if Logan's claim is accepted as true and his appellate counsel had raised these claims on direct appeal, the result would not have changed. As discussed supra, the arguments Logan raised in his Rule 40 petition regarding the sufficiency of the evidence and the effectiveness of his trial counsel were without merit. Consequently, Logan has presented no colorable claim of ineffective assistance of appellate counsel entitling him to a hearing on his HRPP Rule 40 petition. Therefore,

IT IS HEREBY ORDERED that the circuit court's May 4, 2001 order denying Logan's HRPP Rule 40 petition for post-conviction relief is affirmed.

DATED: Honolulu, Hawai'i, July 21, 2004.

On the briefs:

Rodney K. Logan,
petitioner-appellant
pro se

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Deputy Prosecuting Attorney,
for respondent-appellee
State of Hawai'i