

*** NOT FOR PUBLICATION ***

NO. 25329

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

MARCOS HOOKANO RAMOS, Petitioner-Appellant

vs.

STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE FIRST CIRCUIT COURT
(S.P.P. NO. 02-1-0014)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Acoba, JJ.
and Circuit Judge Wilson, assigned by reason of vacancy)

Petitioner-appellant Marcos H. Ramos appeals from the September 5, 2002 amended order of the circuit court of the first circuit, the Honorable Karl K. Sakamoto presiding, denying Ramos's Hawai'i Rules of Penal Procedure (HRPP) Rule 40¹ petition for post-conviction relief from a judgment of conviction for murder. On appeal, Ramos argues that the circuit court erred when it (1) failed to consider, rule on, or respond to his motion for appointment of counsel prior to the dismissal of the petition, (2) incorrectly applied HRPP Rule 40(e) to permit the state to amend its defective response, and (3) denied the 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 advanced and the issues raised, we hold that the circuit court did not err when it: (1) denied Ramos's motion for appointment of counsel at the same time it dismissed his petition

¹ HRPP Rule 40 provides in relevant part that "[a]t 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"

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because both rulings required the court to find the petition patently frivolous; (2) allowed the prosecution to amend its response because, although HRPP Rule 40 does not specifically address amending a response, the rule provides the court with wide discretion, and it was clearly within the court's discretion to allow the prosecution to file an amended response; and (3) denied the claim of ineffective assistance of counsel because the same claim was previously ruled upon in S.P.P. No. 01-1-0012, see HRPP Rules 40(a)(3) and 40(g)(2). Therefore,

IT IS HEREBY ORDERED that the judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, June 18, 2003.

On the briefs:

Marcos H. Ramos,
petitioner-appellant pro se

James M. Anderson,
Deputy Prosecuting Attorney,
for respondent-appellee