

NO. 23070

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

RICHARD ARNOLD ALLEN, Petitioner-Appellant, v.
STATE OF HAWAII, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(S.P.P. NO. 99-03)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Watanabe and Foley, JJ.)

Petitioner-Appellant Richard Arnold Allen (Allen) appeals from the December 10, 1999, "Findings of Fact and Conclusions of Law and Order" (Order) entered by Judge Greg K. Nakamura of the Circuit Court of the Third Circuit (the circuit court). Following an evidentiary hearing, the circuit court dismissed Allen's Petition to Vacate, Set Aside, or Correct Judgment, filed pursuant to Hawaii Rules of Penal Procedure Rule 40 (Rule 40 petition), on grounds that by entering the plea of no contest to the charges, Allen knowingly, voluntarily, and intelligently waived his right to trial and the relief requested in his Motion to Dismiss the Indictment.

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 resolve Allen's points of error as follows:

(1) Allen contends that the circuit court's Findings of Fact concerning ineffective assistance of counsel were clearly erroneous. The record indicates there was substantial evidence to support the circuit court's Findings of Fact. "[I]t is well settled that an appellate court will not pass upon issues dependent on the credibility of witnesses and the weight of the evidence[.]" Domingo v. State, 76 Hawai i 237, 242, 873 P.2d 775, 780 (1994) (internal quotation marks omitted).

(2) Allen contends that the circuit court erred in deciding he was not denied effective assistance of counsel. Allen fails to show that defense counsel's assistance fell below the range of competence demanded of criminal defense attorneys or resulted in the withdrawal or substantial impairment of a potentially meritorious defense. Dan v. State, 76 Hawai i 423, 427, 879 P.2d 528, 532 (1994).

(3) Allen contends that he is entitled to withdraw his no contest plea and proceed to trial. A defendant is entitled to withdraw his or her guilty plea after imposition of sentence only upon a showing of manifest injustice, occurring when a defendant makes a plea involuntarily or without knowledge of the direct consequences of his plea. Barnett v. State, 91 Hawai i 20, 28, 979 P.2d 1046, 1054 (1999). No manifest injustice occurs when the trial court makes an affirmative showing through an on-the-record colloquy between the court and the defendant that shows

the defendant had a full understanding of what his or her plea connoted and its direct consequences. State v. Cornelio, 68 Haw. 644, 646-47, 727 P.2d 1125, 1127 (1986). On June 9, 1997, the circuit court engaged Allen in an on-the-record colloquy in open court establishing that he understood his rights and that by entering his no contest plea, he knowingly and voluntarily waived them.

Therefore,

IT IS HEREBY ORDERED that the December 10, 1999, Findings of Fact and Conclusions of Law and Order is affirmed.

DATED: Honolulu, Hawaii, September 28, 2001.

On the briefs:

R. Steven Geshell,
for petitioner-appellant.

Chief Judge

Lincoln S.T. Ashida,
Deputy Prosecuting Attorney,
County of Hawaii,
for respondent-appellee.

Associate Judge

Associate Judge