

NO. 24131

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

EUGENE J. HUTCH, Petitioner-Appellant, v.  
STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(S.P.P. NOS. 00-01-0019, 00-01-0041, AND 00-01-0043)  
(CR. NOS. 94-2819, 96-1076, AND 96-2224)

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Eugene J. Hutch (Hutch) appeals from the circuit court's "Findings of Fact, Conclusions of Law, and Order Denying Petitioner Eugene J. Hutch's Petitions for Post-Conviction Relief" (FsOF, CsOL, and Order) entered on February 21, 2001, in the following three special prisoner proceeding (S.P.P.) cases.

First, in State v. Hutch, S.P.P. No. 00-01-0019, filed in the Circuit Court of the First Circuit, State of Hawai'i, on May 2, 2000, Hutch filed a petition seeking a release from custody and alleging the following:

1. Respondent-Appellee State of Hawai'i (the State) erroneously denied parole to Hutch.
2. The State wrongfully ordered Hutch to work.
3. The State erroneously alleged that Hutch escaped.

4. The State was deliberately indifferent to prison policy.

Second, in State v. Hutch, S.P.P. No. 00-01-0041, filed in the Circuit Court of the First Circuit, State of Hawai'i, on September 14, 2000, Hutch filed a petition seeking a release from custody and alleging the following:

1. The State failed to give Hutch a pre-revocation hearing within five working days.

2. The State retaliated against Hutch for filing a lawsuit, Hutch v. Parsons, Civil No. 00-1-2175-07, filed in the Circuit Court of the First Circuit, State of Hawai'i, on July 12, 2000, against Parole Officer Douglas Parsons, Diamond Head Mental Health Center, and the Victory Ohana Program (VOP).

3. The State violated Hawai'i Rule of Penal Procedure Rule 40(a)(2)(ii) when parole was unlawfully revoked.

Third, in State v. Hutch, S.P.P. No. 00-01-0043, filed in the Circuit Court of the First Circuit, State of Hawai'i, on September 20, 2000, Hutch filed a petition entitled, "Writ of Habeas Corpus Pursuant to Hawaii Revised Statutes (H.R.S.) Chapter 660-5" alleging the following:

1. The State released Hutch on parole on June 8, 2000, to his home, not to the VOP.

2. If Hutch was intoxicated on July 3, 2000, his signed statement that he was intoxicated must be suppressed.

3. The State and the VOP retaliated against Hutch for filing a lawsuit, Civil No. 00-1-2175-07, on July 12, 2000, against Parole Officer Douglas Parsons, Diamond Head Mental Health Center, and the VOP.

4. On July 18, 2000, the VOP erroneously discharged Hutch for his alleged intoxication on July 3, 2000, and Parole Officer Douglas Parsons issued out a warrant.

5. Hutch did not receive his preliminary hearing within five working days of his arrest.

In S.P.P. No. 00-01-0019, on October 10, 2000, Hutch filed a complaint alleging the following:

1. The State erroneously revoked and denied parole to Hutch.

2. The State wrongfully ordered Hutch to work.

3. The State erroneously alleged that Hutch escaped.

4. Parole Officer Douglas Parsons wrongfully retaliated against Hutch for filing court documents against the chair of the Hawai'i Paroling Authority.

5. Parole Officer Douglas Parsons lied at the parole hearing on September 6, 2000, when he said Hutch told him that Hutch consumed alcohol.

6. The Prison Inmate Grievance System is, and should be declared, inadequate.

7. Hutch was denied his right to a preliminary hearing within five working days of his arrest and return to the custody of the Department of Public Safety pursuant to Rule 23-700-42(a)(c).

8. Hutch sent the petition filed on September 20, 2000, that commenced S.P.P. No. 00-01-0043 to the court on July 26, 2000, and Hutch sent the petition filed on September 14, 2000, that commenced S.P.P. No. 00-01-0041 to the court on July 27, 2000, and these petitions have not been heard.

9. Hutch's parole was unlawfully revoked and Hutch was subjected to disparate treatment because he is "Black (African-American)."

10. Hutch's parole was revoked after a hearing that did not comply with the minimum due process requirements.

Judge Karen S. S. Ahn held consolidated hearings on January 29, 2001, and February 5, 2001. On February 21, 2001, the court entered the FsOF, CsOL, and Order stating, in relevant part, as follows:

FINDINGS OF FACT

1. On February 19, 1997, [the court] sentenced [Hutch] to five years in jail each in Cr. Nos. 94-2819 and 96-1076, . . . .

2. On December 9, 1999, and on January 26, 2000, [Hutch] entered into a furlough agreement under which he agreed to work full-time while participating in the work furlough program.

3. In January of 2000, [Hutch] quit his job at Lava Lining and refused to return although ordered to do so by his Project Bridge furlough counselor David Fukuzawa. [Hutch] did not return to this job. . . .

. . . .

5. Effective June 8, 2000, the Hawaii Paroling Authority (hereinafter "HPA") granted release of [Hutch] on parole, the conditions of which included a bar on [Hutch's] possession or consumption of alcohol and that he "carry out all instructions ([Hutch's] parole officer) gives."

6. The HPA also approved of [Hutch's] living with his wife while on parole. However, the home where [Hutch's] wife lived was not available to [Hutch]. . . . [Hutch's] parole officer Douglas Parsons . . . arranged for [Hutch's] parole release to Victory Ohana. Parsons told [Hutch] on June 7, 2000, why he could not live at his wife's home and that Victory Ohana was available, at which time [Hutch] agreed to enter Victory Ohana. Parsons informed [Hutch] that he would have to abide by all of Victory Ohana's rules and stay in the program for from three to six months as a condition of parole, to both of which [Hutch] agreed. [Hutch] never mentioned the possibility of living with anyone else. Parsons did not tell [Hutch] that Parsons was sending [Hutch] to Victory Ohana because he had filed lawsuits against HPA Chair Alfred Beaver. [Hutch] was released to Victory Ohana on June 8, 2000.

. . . .

8. On July 3, 2000, Victory Ohana founder Gary Shields found [Hutch] smelled of alcohol. [Hutch] told Shields . . . that he had drunk alcohol. . . . [Hutch] admitted to Parsons that he had drunk alcohol on July 3 because of stress from being at Victory Ohana. . . .

9. While at Victory Ohana, . . . [Hutch] was disruptive, uncooperative, and confrontational in classes, . . . . [Hutch] wanted to do some things his way, violated his curfew, and told other enrollees that they did not have to do certain things. . . .

10. On July 18, 2000, Victory Ohana terminated [Hutch] from its program, notifying Parsons of this by telephone. Parsons met with [Hutch] that day at Parsons' office, at which time [Hutch] gave Parsons a copy of a lawsuit which [Hutch] and his wife filed on July 12, 2000, against Parsons, Victory Ohana, Diamond Head Mental Health Center, "et al.", in Civil No. 00-1-2175-07, . . . . This was the first Parsons knew of the filed civil lawsuit. . . . Parsons did not notify the HPA about the civil lawsuit.

. . . .

12. On July 18, 2000, . . . Parsons . . . serv[ed] [Hutch] . . . with a parole retake warrant, which noted the alleged parole violations with which [Hutch] was being charged. [Hutch] admitted not only drinking alcohol but staying out past curfew. [Hutch] was rearrested on a new parole retake warrant on August 7, 2000. . . . A pre-revocation probable-cause hearing was conducted on August 10, 2000, . . . . At the end of the hearing, the officer found that [Hutch] "probably" committed the two alleged violations.

. . . .

19. At the consolidated hearing on January 29, 2001, . . . the Court informed all parties that it would hear evidence relating to three issues: 1) alleged retaliation, 2) alleged racial discrimination, and 3) the conduct of a pre-revocation hearing after [Hutch's] arrest for alleged parole violation. . . .

CONCLUSIONS OF LAW

. . . .

7. Pursuant to Monalim v. State, 89 Haw. 474 (1998), a petitioner is not entitled to relief for the HPA's failure to comply with the time limit specified for a parole revocation hearing . . . unless the record shows that the failure to comply 1) was unreasonable and 2) caused the petitioner actual prejudice. Monalim, at 89 Haw. 476. . . .

8. The pre-revocation hearing required by administrative rule to be conducted within five working days of arrest is, in essence, a "preliminary hearing" to determine whether or not there is sufficient cause to hold a parolee for full parole revocation hearing, which is the basis for more than determining probable cause. . . . The test under Monalim . . . appears to be an appropriate test for determining such entitlement for failure to hold a pre-revocation hearing within the required time period.

9. On this record, the failure to provide [Hutch] with a pre-revocation hearing within five days of his initial arrest was unreasonable, and [the State] failed to rebut that presumption. However, [Hutch] has not established that the State's failure to comply with the pre-revocation hearing time requirement after initial arrest caused him actual prejudice.

10. There also has been an insufficient showing based upon which the Court could conclude that [Hutch's] claims of retaliation or racial discrimination entitle him to relief.

11. Thus, [Hutch's] three allegations and arguments pertaining thereto are without merit. On that basis and to that extent, the petitions are denied.

12. All other issues raised by [Hutch] are patently frivolous and without trace of support either in the record or from other evidence submitted by [Hutch], and to that extent, the petitions are denied without a hearing.

In the "TABLE OF CONTENTS" section of the opening brief, Hutch contends that the court reversibly erred in the following respects:

"PAROLE OFFICER DOUGLAS PARSONS WAS ALLOWED TO GIVE PERJURY STATEMENT TO THE LOWER COURT AND FROM THAT STATEMENT, KEEP [Hutch] IN JAIL[.]"

"THE LOWER COURT FAILED TO ALLOW [Hutch] TO ARGUED GROUNDS OF WRONGFUL PRISON CHARGE OF ESCAPE[.]" [The "statute say after 30 minutes charge prisoner, yet [Hutch] was twenty-five 25 minutes late."]

"THE LOWER COURT FAILED TO ALLOW [Hutch] TO ARGUE GROUND OF PRISON OFFICIALS HINDERING INMATES ACCESS TO THE COURTS."

"THE HAWAII PAROLING AUTHORITY HAS THE APPROVAL TO USE DISCRIMINATION AGAINST INMATES FROM THE MAINLAND COMPARED TO THE LOCAL INMATES IN LENGTH OF TIME IN PAROLE VIOLATIONS[.]"

"THE PAROLE OFFICER DOUGLAS PARSONS AND PRISON STAFF DENIED [Hutch] HIS RIGHT TO A PRE-PAROLE PRELIMINARY HEARING WITHIN THE FIVE (5) WORKING DAYS FROM [Hutch's] ARREST WHEN PREJUDICE OCCURRED FROM DENIAL OF WITNESS[.]"

"THE LOWER COURT WRONGFULLY DENIED BAIL WHEN IT WAS KNOWN THAT PAROLE OFFICER DOUGLAS PARSONS GAVE PERJURY STATEMENT TO THE COURT [on January 29, 2001.]"

"[Hutch] SHOULD BE PAID FOR FALSE IMPRISONMENT FOR [Hutch] WAS NEVER RELEASED[.]"

Hutch states the following as his points on appeal:

[Hutch's] Parole Violation was alleged to be not going alone with the rules in Victory `Ohana Program, . . . .

Yet, [Hutch] paid \$431.00 . . . .

[Hutch] was alleged to consume alcohol, yet, [Hutch's] wife was drinking and kissing [Hutch], . . . . Plus, fellow Parolee witness to the fact that [Hutch] sought to take whatever Breathalyzer test, . . . .

. . . .

[Hutch] was not allowed to use wife's Statement under oath at Parole Board Hearing on September 6, 2000, . . . .

. . . .

The State of Hawaii court system allows the Prison Officials hinder inmates access to the courts, and there is no remedy at law, . . . .

Yet inmates needs to help each other, . . . and there is no legal help from law library Staff for [Hutch] and prisoners[.]

In a declaration filed on December 8, 2000, Parsons stated that after Hutch's arrest on the parole violation warrant on July 18, 2000,

I prepared the paperwork for [Hutch's] pre-revocation hearing, which is required by HPA's administrative rules to be held within five working days of a parolee's arrest, but because I was set to be on vacation for two weeks from July 24, 2000, I put the paperwork out for another parole officer to handle for me.

At the hearing on January 29, 2001, Parsons testified that, as a result of his mistake, paragraph 16 of his declaration was incorrect. In fact, when Parsons realized that the State had failed to conduct the preliminary pre-revocation parole hearing within five working days, the warrant was recalled on August 7, 2000. Hutch was immediately re-arrested on a new warrant, and the preliminary pre-revocation parole hearing occurred on August 10, 2000.

#### DECISION

Many of Hutch's complaints and issues raised in the circuit court and/or on appeal are based upon his lack of understanding of the relevant law, legal principles, and legal procedures. The other of Hutch's complaints and issues raised in the circuit court and/or on appeal, to the extent they are in fact point to errors, fail to point to how those errors caused actual prejudice to Hutch.

With respect to Hutch's complaints and issues decided by the court without a hearing, we conclude that the court was right in deciding them against Hutch without a hearing.

With respect to Hutch's complaints and issues decided by the court after the hearing, we conclude that the relevant findings of fact are not clearly erroneous and, based on those



facts, the court was right in deciding that each complaint lacked the necessary factual and/or legal basis.

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that the circuit court's "Findings of Fact, Conclusions of Law, and Order Denying Petitioner Eugene J. Hutch's Petitions for Post-Conviction Relief," from which the appeal is taken, filed on February 21, 2001, is affirmed.

DATED: Honolulu, Hawai'i, February 5, 2003.

On the briefs:

Eugene J. Hutch,  
Petitioner-Appellant, *pro se.*

Chief Judge

Lisa Itomura,  
Deputy Attorney General,  
for Respondent-Appellee.

Associate Judge

Associate Judge