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NO. 24185

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

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

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(S.P.P. NO. 01-01-0006)

SUMMARY DISPOSITION ORDER

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

We affirm the circuit court's March 13, 2001 "Order Dismissing Petitioner Eugene J. Hutch's [February 21, 2001] Petition for Post-Conviction Relief."

BACKGROUND

This court's Memorandum Opinion filed on January 22, 1999, deciding appeals Nos. 21159 and 21284, consolidated into appeal No. 21159, states, in relevant part, as follows:

On December 19, 1994, in Cr. No. 94-2819, the State of Hawai'i (State) charged Hutch with one count of Promoting a Dangerous Drug in the Third Degree and one count of Unlawful Use of Drug Paraphernalia.

On June 5, 1996, in Cr. No. 96-1076, the State charged Hutch with one count of Unlawful Use of Drug Paraphernalia and one count of Promoting a Dangerous Drug in the Third Degree.

On October 29, 1996, in Cr. No. 96-2224, the State charged Hutch with one count of Robbery in the Second Degree.

If convicted of any of the above offenses other than the Unlawful Use of Drug Paraphernalia offenses, Hutch would be a repeat offender. Although Hawai'i Revised Statutes (HRS) § 706-606.5(1) (1993) mandates that repeat offenders "shall be sentenced to a [specified] mandatory minimum period of imprisonment without possibility of parole during such period[,]" HRS § 706-606.5(4) (Supp. 1997) states in relevant part that "[t]he court may impose a lesser mandatory minimum period of imprisonment without possibility of parole than that mandated by

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this section where the court finds that strong mitigating circumstances warrant such action. . . . The court shall provide a written opinion stating its reasons for imposing the lesser sentence."

On August 21, 1996, pursuant to a plea agreement executed by a deputy prosecuting attorney (DPA), acting for the City and County of Honolulu prosecutor representing the State, Hutch pled guilty to the counts of Promoting a Dangerous Drug in the Third Degree charged in Cr. Nos. 94-2819 and 96-1076. The plea agreement was that Hutch would plead guilty to those two counts and be sentenced to a maximum indeterminate sentence of five years for each count in exchange for the State to nolle prosequi the counts of Unlawful Use of Drug Paraphernalia and recommend a reduced mandatory minimum sentence of two years and four months in Cr. No. 94-2819 and a mandatory minimum sentence of one year and eight months in Cr. No. 96-1076. The record indicates that the court bound itself to this plea agreement.

On December 18, 1996, subject to another plea agreement executed by the DPA, Hutch pled guilty to the Robbery in the Second Degree charged in Cr. No. 96-2224. This plea agreement called for Hutch to plead guilty in exchange for the State to "recommend a sentence of 10 years." The agreement was silent on the subject of a mandatory minimum sentence and permitted the State to argue for a sentence consecutive to the sentences imposed in Cr. Nos. 94-2819 and 96-1076.

On February 19, 1997, the circuit court sentenced Hutch in all three cases. In Cr. No. 94-2819, the court sentenced Hutch to an indeterminate term of imprisonment for five years with a mandatory minimum term of two years and four months. In Cr. No. 96-1076, the court sentenced Hutch to an indeterminate term of imprisonment for five years with a mandatory minimum term of one year and eight months. In Cr. No. 96-2224, the court sentenced Hutch to serve a ten-year indeterminate term of imprisonment. This sentence was silent on the subject of a mandatory minimum sentence. All of the sentences were ordered to run concurrent to each other.

By three letters to the Hawai'i Paroling Authority (HPA), two dated February 19, 1997 and one dated March 27, 1997, the DPA recommended the following minimum sentences in the following cases:

Cr. No. 94-1829 [sic] - two years and four months.  
Cr. No. 96-1076 - one year and eight months.  
Cr. No. 96-2224 - two years and four months.

On May 21, 1997, after a hearing on May 15, 1997, the HPA set Hutch's minimum term of imprisonment in each of the three cases at four years.

Hutch filed his Petition for Post Conviction Relief on July 14, 1997 (July Petition). The grounds asserted were (1) the State violated the plea agreement when the HPA set Hutch's minimum term at four years instead of two years and eight months and (2) Hawai'i Administrative Rules (HAR) Rule 17-202-1(b) is

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unconstitutional because it does not allow Hutch to gain help from "jailhouse lawyers." On January 7, 1998, the circuit court summarily denied the July Petition without a hearing. Hutch filed his Notice of Appeal of this denial on January 15, 1998.

On September 24, 1997, Hutch filed a petition for a writ of habeas corpus pursuant to HRS chapter 660-5 (1993) (September Petition). The grounds alleged in this September Petition were the same grounds alleged in the July Petition. On November 7, 1997, the circuit court summarily denied Hutch's September Petition without a hearing. Hutch filed a Notice of Appeal of this denial on November 25, 1997. The two appeals were consolidated into No. 21159 on May 21, 1998.

POINTS ON APPEAL

Hutch contends that the circuit court erred when it decided that neither the July Petition nor the September Petition stated a colorable claim and summarily denied both petitions without a hearing. More specifically, Hutch contends that the four-year minimum term of imprisonment imposed by the HPA in each of the three cases violated the three plea agreements that induced him to plead guilty and are therefore illegal.

Hutch also contends that HAR § 17-202-1(b) is unconstitutional. HAR § 17-202-1(b) (1983) states that "[m]utual assistance between inmates or wards on legal matters is permitted on a case by case basis at the facility administrator's discretion. There is no absolute right to mutual assistance."

. . . .

CONCLUSION

Accordingly, we affirm both the January 7, 1998 Order denying the July 14, 1997 Petition and the November 7, 1997 Order denying the September 24, 1997 Writ.

(Footnotes omitted.)

This court's Memorandum Opinion filed on September 13, 2002, in Hutch's appeal no. 23959 of S.P.P. No. 99-0020 states, in relevant part, as follows:

On February 4, 1999, Hutch filed a document in the office of the Hawai'i Supreme Court Clerk. On February 5, 1999, the Hawai'i Supreme Court entered an order stating as follows:

Upon consideration of the document titled "Petitioner-Appellants Now Seek The Hawaii Supreme Court To Hear The Matter At Hand", which appears to be an application for writ of certiorari, filed by . . . Hutch, Pro Se, it appears that [Hutch] is represented by counsel, therefore,

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IT IS HEREBY ORDERED that the application for writ of certiorari filed by [Hutch] is denied without prejudice to consideration of a subsequent application for writ of certiorari filed by counsel of record.

Counsel for Hutch did not file an application for writ of certiorari until May 4, 1999. On May 7, 1999, the Hawai'i Supreme Court denied the application on the ground that it was untimely.

On August 11, 1999, Hutch filed an HRPP Rule 40 petition wherein he asserted the following grounds:

(1) Hutch was the victim of the ineffective assistance of counsel regarding his appeals because his counsel failed to timely file an application for writ of certiorari.

(2) HAR § 17-202-1(b) denied Hutch and his fellow inmates their constitutional right to access to the courts.

(3) The HPA did not comply with the prosecutor's plea agreement.

(4) The HPA failed to comply with HRS § 706-669(5) (Supp. 2002) which allows it to reduce the minimum term it previously set.

On December 23, 1999, the court entered its Findings of Fact, Conclusions of Law and Order Granting in Part and Denying in Part Petition for Post-Conviction Relief. In this document, the court set ground (1) for a hearing, but decided that grounds (2), (3), and (4) had previously been finally decided in appeal no. 21159. We affirm this decision and order.

. . . .

On December 12, 2000, the court entered an Order Denying Defendant's Petition for Post-Conviction Relief concluding that "[t]he trial court does not have the authority or jurisdiction to enter an order extending the expired time for an appeal to the Supreme Court."

. . . .

The dispositive issue in this appeal is the issue that arose as follows:

1. On February 5, 1999, the Hawai'i Supreme Court "ORDERED that the application for writ of certiorari filed by [Hutch] is denied without prejudice to consideration of a subsequent application for writ of certiorari filed by counsel of record."

2. On May 4, 1999, counsel for Hutch filed an application for writ of certiorari. On May 7, 1999, the Hawai'i Supreme Court denied the application on the ground that it was untimely.

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3. On August 11, 1999, Hutch filed a HRPP Rule 40 petition wherein he asserted that he was the victim of the ineffective assistance of counsel regarding his appeals because his counsel failed to timely file an application for writ of certiorari.

4. On December 12, 2000, the circuit court entered an Order Denying Defendant's Petition for Post-Conviction Relief in which it concluded that "[t]he trial court does not have the authority or jurisdiction to enter an order extending the expired time for an appeal to the Supreme Court."

The question is whether the circuit court was right or wrong when it entered the order described in paragraph 4 above. We conclude that circuit court's decision was right but the reason given for its decision was wrong.

Hutch alleges that he was the victim of the ineffective assistance of counsel because his counsel failed to file a timely application for writ of certiorari. If this had been an appeal from the circuit court, Hutch could not prevail on his allegation that he was the victim of the ineffective assistance of counsel, unless he showed that "an appealable issue [was] omitted as a result of the performance of his" appellate counsel. Briones v. State, 74 Haw. 442, 467, 848 P.2d 966, 978 (1993). In appeals by defendants in criminal cases, an appealable issue "is an error or omission by counsel . . . resulting in the withdrawal or substantial impairment of a potentially meritorious defense." Id. at 465-66, 848 P.2d at 977 (footnote omitted).

Admittedly, the issuance of a writ of certiorari "is a matter within the discretion of the supreme court." Hawai'i Rules of Appellate Procedure Rule 31(e)(2) (1999) and Rule 40.1(b) (2002). Nevertheless, a writ will not be issued if the record does not show "the withdrawal or substantial impairment of a potentially meritorious defense." Briones, 74 Haw. at 465-66, 848 P.2d at 977 (footnote omitted). In this case, the record fails to contain that necessary showing. Therefore, the allegation by Hutch that the ineffective assistance of counsel denied him a possible discretionary review by the Hawai'i Supreme Court is not supported by the record.

### CONCLUSION

Accordingly, we affirm the circuit court's (1) December 23, 1999 "Findings of Fact, Conclusions of Law and Order Granting in Part and Denying in Part Petition for Post-Conviction Relief" and (2) December 12, 2000 "Order Denying Defendant's Petition for Post-Conviction Relief."

On February 5, 2001, the circuit court held its second and final hearing on the special proceedings commenced by Hutch in S.P.P. Nos. 00-01-0019, 00-01-0041, and 00-01-0043. On February 21, 2001, at 9:00 a.m., Judge Karen S. S. Ahn entered

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"Findings of Fact, Conclusions of Law, and Order Denying Petitioner Eugene J. Hutch's Petitions for Post-Conviction Relief," which Hutch subsequently appealed in appeal No. 24131. This court's Summary Disposition Order filed in appeal No. 24131 states, in relevant part, as follows:

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:

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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.

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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. . . .



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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

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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 ARGUE 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[.]"

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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.

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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.

On February 21, 2001, at 10:01 a.m., Hutch commenced the case on appeal, S.P.P. No. 01-01-0006, by filing a "Petition to Vacate, Set Aside or Correct Judgment or to Release Petitioner from Custody." In this petition, Hutch expressly sought an order setting aside the judgments in Cr. Nos. 94-2819, 96-1076, and 96-2224, and implicitly sought an order setting aside the revocation of his parole. The following are quotes from Hutch's petition:

"I DO NOT KNOW THE LAW, AND I HAD TO SNEAK HELP FROM A FELLOW INMATE JAILHOUSE LAWYER AGAINST RULES."

"[HUTCH] DID NOT UNDERSTAND THE PLEA OF GUILTY FOR MENTAL PROBLEMS."

"[HUTCH] HEAR VOICES, . . . AND DID NOT GET THREE (3) PANEL DOCTORS."

"[HUTCH] WAS NOT CONSIDERED FOR CIVIL COMMITMENT HRS § 706-607[.]"

"[HUTCH] IS SUFFERING FROM MENTAL ABNORMALITY AND NEEDS PSYCHIATRIC TREATMENT AND SHOULD HAVE BEEN GIVEN REHABILITATIVE TREATMENT INSTEAD OF CRIMINAL PROSECUTION AND IS BEING PUNISHED IN PRISON, . . . ."

"[HUTCH] IS BEING PUNISHED FOR HELPING OTHER INMATES IN PRISON."

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"THE JUDGE AHN FAILED TO CHARGE PAROLE OFFICER FOR PERJURY,  
. . . ."

"STATE . . . MADE FALSE STATEMENT AND STATE FAILED TO CHARGE  
PAROLE OFFICER WITH PERJURY."

"I HAD TO SNEAK HELP AGAINST PRISON RULE 17-202-1(b) [.]

On March 13, 2001, before the State filed an answer to the petition, Judge Ahn entered an Order Dismissing Petitioner Eugene J. Hutch's Petition for Post-Conviction Relief on the basis that it was patently frivolous and without a trace of support in the record or that, pursuant to HRPP Rule 40(a)(3), the issues asserted therein had been waived.

In his opening brief, Hutch contends, in relevant part, as follows:

"the Honorable Court allowed State of Hawaii's employees to lie on the Witness Stand, and reasons [sic] was because [Hutch] has mental problems[;]"

"Parole Officer Douglas Parsons made Perjury Statement before the court[;]"

"[Hutch] has prior mental health problems[;]"

"it was Ron Ford's [the Victory Ohana Program's] failing to give necessary medication caused the unwanted action and behavior[;]"

"[Hutch] was always denied his mental health medications[;]"

Hutch's "access to the Courts was denied by the Court below[;]"

"[Hutch] contends that Prison Rule 17-202-1(b) is unconstitutional, . . . , yet there is no alternative form of assistance in the State of Hawaii Prison Law Library's [sic][;]"

"[Hutch] cannot obtain Legal information from other inmate Jailhouse Lawyers, who are scare [sic] of punishment[;]"

"[T]he Prison Staff has been allowed to punish [Hutch] to help [sic] inmates gain adequate, effective, and meaningful access herein[;]"

"[Hutch] contends that he has been retaliated against[;]"

Judge Ahn "knew the Hawaii State employees and the Victory Ohana Staff made several Perjury Statements and did nothing[.]"

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In his opening brief, Hutch asked numerous questions, including the following:

"Should an Outside Drug Program force Parolees inadequate medical care by not keeping records of mental health medications?"

"Should an Outside Drug Program for Dual Dia[g]no[s]is operate with untrained psychological Staff?"

"Should the State of Hawaii's Prison Staff continued [sic] to be allowed to punish inmates on HAR § 17-202-1(b)?"

In conclusion, Hutch asked the court

to reverse and remand this case back to the lower court to charge all State of Hawaii's employees with Perjury Statements, to include Staff, at the Victory Ohana Program and Court Clerks's misconducts for not serving the Respondents, for two (2) other inmates served their Rule 40 - Post-Conviction Relief applications, but inmates did not receive a copy of their documents.

. . . .

P.S. These inmates also has been ignored by the lower Court Judges & Court Clerks, for not having their documents filed or given answer why not?

In S.P.P. No. 01-01-0006 and this appeal No. 24185, Hutch presents complaints and raises issues he raised or could have raised in prior proceedings and appeals. It appears that he seeks to add to and improve upon some of his previous arguments.

We agree with the circuit court that Hutch's February 21, 2001 petition is patently frivolous and without a trace of support in the record or that, pursuant to HRPP Rule 40(a)(3), the issues asserted therein had been waived. We add the following third category: "or that, pursuant to HRPP Rule 40(a)(3), the issues asserted therein had been previously ruled upon."

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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 "Order Dismissing Petitioner Eugene J. Hutch's [February 21, 2001] Petition for Post-Conviction Relief," from which the appeal is taken, filed on March 13, 2001, is affirmed.

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

On the briefs:

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

Chief Judge

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

Associate Judge

Associate Judge