

NOT FOR PUBLICATION

NO. 24255

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

JANNA J. MORRISON, Petitioner-Appellant
v. STATE OF HAWAII, Respondent-Appellee

APPEAL FROM THE SECOND CIRCUIT COURT
(S.P.P. NO. 00-1-0006(2))

SUMMARY DISPOSITION ORDER
(By: Burns, C.J., Lim and Foley, JJ.)

Petitioner-Appellant Janna J. Morrison, aka Janna J. Ibarra, (Morrison) appeals from the Decision and Order Denying Rule 40 Petition, filed April 30, 2001; the Order Denying Defendant's Ex-Parte Motion for Order Granting Post Conviction Relief, filed April 30, 2001; and the Order Denying Petitioner's Motion to Reconsider Petition, filed May 9, 2001, in the Circuit Court of the Second Circuit¹ (circuit court). The circuit court dismissed Morrison's Rule 40 petition without a hearing on grounds that the claims raised therein were "patently frivolous, without trace support in the record, and/or for failure to state a grounds upon which relief may be granted."

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to

¹The Honorable Shackley F. Rafetto presided.

the arguments advanced and the issues raised by the parties, we affirm.

The record indicates the circuit court engaged Morrison in an on-the-record colloquy in open court regarding the consequences of Morrison's no contest plea, establishing that Morrison understood her rights and that by entering her no contest plea, she knowingly and voluntarily waived her rights. Following the colloquy, Morrison entered a plea of no contest to Count Two, Prohibited Acts Related to Drug Paraphernalia (Hawaii Revised Statutes § 329-43.5(a) (1993)).

"Generally, a guilty plea made voluntarily and intelligently precludes a defendant from later asserting any nonjurisdictional claims, including constitutional challenges to the pretrial proceedings." State v. Morin, 71 Haw. 159, 162, 785 P.2d 1316, 1318 (1990) (citing Brady v. United States, 397 U.S. 742, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970)). "Although the defendant may still challenge the sufficiency of the indictment or other like defects bearing directly upon the government's authority to compel the defendant to answer to charges in court, claims of nonjurisdictional defects in the proceeding, such as unlawfully obtained evidence and illegal detention, will generally not survive the plea." Morin, 71 Haw. at 162, 785 P.2d at 1318. For purposes of evaluating waiver of alleged nonjurisdictional defects, a plea of nolo contendere is equivalent to a guilty plea. Id. One exception to this general rule

applies where a defendant makes a plea conditioned upon the right to appeal certain pretrial rulings. Id. at 162, 785 P.2d at 1319.

Morrison failed to reserve in the record her right to appeal by conditional plea. The April 2, 1998 transcript indicates that Morrison understood her rights and that by entering her no contest plea, she knowingly and voluntarily waived the claims she asserted in her Rule 40 petition.

Therefore,

IT IS HEREBY ORDERED that the Decision and Order Denying Rule 40 Petition, filed April 30, 2001; the Order Denying Defendant's Ex-Parte Motion for Order Granting Post Conviction Relief, filed April 30, 2001; and the Order Denying Petitioner's Motion to Reconsider Petition, filed May 9, 2001, in the Circuit Court of the Second Circuit are affirmed.

DATED: Honolulu, Hawai'i, May 20, 2003.

On the briefs:

Janna J. Morrison,
petitioner-appellant pro se.

Chief Judge

Tracy A. Jones,
Deputy Prosecuting Attorney,
County of Maui,
for respondent-appellee.

Associate Judge

Associate Judge