

NOT FOR PUBLICATION

NO. 25385

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
JANE LIU, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT,
HONOLULU DIVISION
(HPD CR. NO. M71784)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Jane Liu (Liu) appeals the Order Denying Petition for Post-Conviction Relief filed September 23, 2002 in the District Court of the First Circuit, Honolulu Division (district court).¹

On appeal Liu contends the district court erred by denying her Petition for Post-Conviction Relief because (1) she was provided with ineffective assistance of counsel at trial and on appeal; (2) the evidence at trial was insufficient to prove that her conduct was criminal or that she had intent to harass the complaining witness as required under Hawaii Revised Statutes (HRS) § 711-1106 (1985); (3) her confession was obtained in violation of her Fifth Amendment right against self-incrimination; and (4) there were errors in the transcript of her trial.

¹ The Honorable Colette Y. Garibaldi presided.

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 Liu's points of error as follows:

(1) Liu contends she was denied effective assistance of counsel at trial and on appeal. Liu was provided with effective assistance of counsel at trial and on appeal because "viewed as a whole, the assistance provided was within the range of competence demanded of attorneys in criminal cases." Dan v. State, 76 Hawai'i 423, 427, 879 P.2d 528, 532 (1994) (internal quotation marks, citation, and brackets omitted).

(2) Liu contends there was insufficient evidence to convict her of violating HRS § 711-1106 because she did not intend to spit on the complaining witness and her action was not criminal. The issue of insufficient evidence was previously adjudicated in Liu's prior appeal of her conviction and her prior petition for post-conviction relief, and relief shall not be granted where the issue sought to be raised has been previously ruled upon. Hawai'i Rules of Penal Procedure (HRPP) Rule 40(a)(3).

(3) Liu contends her confession was coerced in violation of her Fifth Amendment right against self-incrimination. The issue of Liu's allegedly coerced confession was previously adjudicated and relief shall not be granted where

the issue sought to be raised has been previously ruled upon.
HRPP Rule 40(a)(3).

(4) Liu contends there were errors in her trial transcript. The issue of an incorrect transcript was waived pursuant to HRPP Rule 40(a)(3) when Liu knowingly and understandingly failed to raise it and it could have been raised before the trial, at the trial, on appeal, or in the prior petition for post conviction relief actually initiated under this rule. Liu is unable to prove the existence of extraordinary circumstances to justify her failure to raise the issue. HRPP Rule 40(a)(3).

Therefore,

IT IS HEREBY ORDERED that the Order Denying Petition for Post-Conviction Relief filed on September 23, 2002 in the District Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, February 13, 2004.

On the briefs:

Jane Liu,
defendant-appellant pro se.
Mark Yuen,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.

Acting Chief Judge

Associate Judge

Associate Judge