

NOT FOR PUBLICATION

NO. 25522

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

ROCKYFELLER WAMIL, Petitioner-Appellant, v.
STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE THIRD CIRCUIT COURT
(S.P.P. NO. 01-1-03)

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Rockyfeller Wamil (Wamil) appeals the Findings of Fact, Conclusions of Law and Order Denying Petitioner's Motion for Post Conviction Relief filed on November 21, 2002 in the Circuit Court of the Third Circuit (circuit court).¹

On appeal, Wamil contends (1) he was provided with ineffective assistance of counsel and (2) the circuit court erred by denying him his constitutional rights.

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 Wamil's points of error as follows:

(1) Wamil contends he was provided with ineffective assistance of counsel. When "viewed as a whole, the assistance

¹ The Honorable Greg K. Nakamura presided.

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) Wamil contends the circuit court violated his constitutional rights by not asking him to orally waive his right to a preliminary hearing; by failing to orally arraign him and by not accepting Wamil's express no contest plea; and by failing to adequately advise him of his right to a jury trial.

"[A] guilty plea made voluntarily and intelligently precludes a defendant from later asserting any nonjurisdictional claims on appeal, including constitutional challenges to the pretrial proceedings." State v. Lei, 95 Hawai'i 278, 282, 21 P.3d 880, 884 (2001) (internal quotation marks, citation, and brackets in original omitted). In State v. Keahi, 66 Haw. 364, 366, 662 P.2d 212, 214 (1983), the Hawai'i Supreme Court held that "for purposes of sentencing, there is no difference between a plea of nolo contendere and a plea of guilty. . . . We think the difference is one of form rather than substance." By entering his no contest plea without reserving appeal of these constitutional issues, Wamil waived his right to raise these issues on appeal.

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The circuit court properly accepted Wamil's no contest plea, and Wamil was arraigned when he pled no contest. Hawai'i Rules of Penal Procedure Rule 11.

The circuit court adequately advised Wamil of his right to a jury trial. State v. Friedman, 93 Hawai'i 63, 68-69, 996 P.2d 268, 273-74 (2000).

Therefore,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Order Denying Petitioner's Motion for Post Conviction Relief filed on November 21, 2002 in the Circuit Court of the Third Circuit is affirmed.

DATED: Honolulu, Hawai'i, August 18, 2004.

On the briefs:

Dana S. Ishibashi
for petitioner-appellant.

Chief Judge

Stephen A. Power,
Deputy Prosecuting Attorney,
County of Hawai'i,
for respondent-appellee.

Associate Judge

Associate Judge