

NO. 25707

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

WILLIAM SANGSTER AHOLELEI, Petitioner-Appellant, v.
STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE FIRST CIRCUIT COURT
(S.P.P. NO. 02-1-0075)

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant William Sangstar Aholelei (Aholelei) appeals the Order Denying Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody filed on March 6, 2003, in the Circuit Court of the First Circuit (circuit court).¹ Aholelei filed his Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody (Rule 40 Petition) on October 23, 2002, pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 40.

In his Rule 40 Petition, Aholelei contended that (1) he was "denied [Hawaii Revised Statutes (HRS)] HRS [§] 853-1 by the State through ineffective assistance of counsel"; (2) "the court failed to deferred [sic] the proceedings in compliance of HRS [§] 853(3)(C) [sic]. . . which gave ineffective assistance of counsel for erroneous advise [sic] to Petitioner"; (3)

¹ The Honorable Sandra A. Simms presided.

"Petitioner would have not plea [sic] guilty [but] for counsel[']s errors"; and (4) he was denied access to the court.

In addition to the above contentions, Aholelei also claims in his opening brief that (5) he was denied access to the courts by not being allowed to use an inmate "jailhouse lawyer" and, therefore, there was a violation of his equal protection rights; (6) he did not receive the proper credit for time served; (7) he received ineffective assistance of counsel; (8) the court erred in not granting him a deferred acceptance of no contest (DANC) plea; (9) he was denied medical care and transfer to a minimum facility due to his filing grievances and a federal lawsuit; (10) some of his claims should have been transferred to a circuit court; and (11) the circuit court erred when it denied his Rule 40 Petition without a hearing. This court will not address claim (3) because Aholelei does not raise or discuss this claim in his opening brief and has thereby waived it. This court does not need to address claims (6), (9), and (10) because Aholelei did not raise these issues in his Rule 40 Petition.

In his opening brief, Aholelei makes the same arguments in different ways. The basic issues are that (1) he received ineffective assistance of counsel, (2) the circuit court erred when it denied his DANC motion, (3) he was denied a hearing on his Rule 40 Petition, and (4) he was denied access to the courts. The other claims in Aholelei's opening brief we do not need to

consider because they are either without merit and/or were improperly raised.

Upon careful review of the record and the briefs submitted by the parties, we hold as follows:

(1) Aholelei fails to establish a claim for ineffective assistance of counsel or that the circuit court erred in denying him a DANC plea. Aholelei's counsel argued for the deferred acceptance, and the circuit court's denial does not render Aholelei's counsel ineffective. Aholelei fails to show that there were "specific errors or omissions reflecting counsel's lack of skill, judgment, or diligence." State v. Jones, 96 Hawai'i 161, 166, 29 P.3d 351, 356 (2001). Pursuant to HRS § 853-4 (1993), the circuit court did not err in denying Aholelei a DANC plea.

(2) The circuit court did not err in denying Aholelei's Rule 40 Petition without a hearing because Aholelei did not show a colorable claim, and "[w]here examination of the record of the trial court proceedings indicates that the petitioner's allegations show no colorable claim, it is not error to deny the petition without a hearing" Barnett v. State, 91 Hawai'i 20, 26, 979 P.2d 1046, 1052 (1999) (quoting Dan v. State, 76 Hawai'i 423, 427, 879 P.2d 528, 532 (1994)).

(3) Aholelei was not denied access to the courts. Aholelei was allowed to file this petition.

Therefore,

IT IS HEREBY ORDERED that the Order Denying Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody filed on March 6, 2003, in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, December 10, 2004.

On the briefs:

William Sangstar Aholelei
petitioner-appellant pro so.

Acting Chief Judge

Ryan Yeh,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for respondent-appellee.

Associate Judge

Associate Judge