

NOT FOR PUBLICATION

NO. 25740

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

SIONE LOLOHEA, Petitioner-Appellant v.
STATE OF HAWAI'I, Repondent-Appellee

APPEAL FROM THE THIRD CIRCUIT COURT
(S.P.P. NO. 02-1-0002K)

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Sione Lolohea (Lolohea) appeals the "Order Denying Petition to Vacate Convictions in Cr. Nos. 98-017K and 98-215K and to Release Petitioner from Custody" filed on May 15, 2003 by the Circuit Court of the Third Circuit (circuit court).¹ The order denied Lolohea's "Petition for Post-Conviction Relief" filed February 7, 2002, and "Petition to Vacate Convictions in Cr. Nos. 98-017K and 98-215K and to Release Petitioner from Custody" filed December 16, 2002, pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 40.

In 1998, Lolohea pleaded no contest to Sexual Assault in the Second Degree, in violation of Hawaii Revised Statutes (HRS) 707-731(1)(a) (Supp. 2001), and Promoting a Dangerous Drug in the Second Degree, in violation of HRS § 712-1242(1)(b)(i) (1993 & Supp. 2001). Prior to sentencing, Lolohea moved to withdraw his no contest plea. The circuit court denied Lolohea's

¹ The Honorable Ronald Ibarra presided.

motion and sentenced Lolohea to serve two concurrent ten-year terms of imprisonment.

In 2002, Lolohea petitioned for post-conviction relief, pursuant to HRPP Rule 40; the circuit court denied the petition.

On appeal, Lolohea contends the circuit court erred by making incorrect findings of facts and conclusions of law and failing to find that his trial attorney was ineffective. Lolohea also contends he required the services of an interpreter prior to entering his plea.

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

(1) The circuit court did not err in denying Lolohea's Petition for Post-Conviction Relief pursuant to HRPP Rule 40. The findings of facts were not erroneous. Dan v. State, 76 Hawai'i 423, 428, 879 P.2d 528, 533 (1994).

A finding of fact is clearly erroneous when (1) the record lacks substantial evidence to support the finding, or (2) despite substantial evidence in support of the finding, the appellate court is nonetheless left with a definite and firm conviction that a mistake has been made. The circuit court's conclusions of law are reviewed under the right/wrong standard.

State v. Locquiao, 100 Hawai'i 195, 203, 58 P.3d 1242, 1250

(2002) (internal quotation marks and citations omitted) (quoting State v. Harada, 98 Hawai'i 18, 22, 41 P.3d 174, 178 (2002)).

The conclusions of law were supported by the circuit court's findings of fact and reflected an application of the correct rule

of law; therefore, the conclusions of law will not be overturned. Dan, 76 Hawai'i at 428, 879 P.2d at 533.

(2) The proper standard for claims of ineffective assistance of counsel on appeal is whether, "viewed as a whole, the assistance provided was within the range of competence demanded of attorneys in criminal cases." Dan, 76 Hawai'i at 427, 879 P.2d at 532 (internal quotation marks, citation, and brackets omitted).

When an ineffective assistance of counsel claim is raised, the defendant has the burden of establishing: 1) that there were specific errors or omissions reflecting counsel's lack of skill, judgment, or diligence; and 2) that such errors or omissions resulted in either the withdrawal or substantial impairment of a potentially meritorious defense.

State v. Jones, 96 Hawai'i 161, 166, 29 P.3d 351, 356 (2001) (internal quotation marks and citation omitted). Lolohea fails to show there were "specific errors or omissions" reflecting his counsel's "lack of skill, judgment, or diligence" and that "such errors or omissions resulted in either the withdrawal or substantial impairment of a potentially meritorious defense." Id.

(3) Lolohea failed to demonstrate that he required the services of an interpreter prior to entering his plea. State v. Faafiti, 54 Haw. 637, 639, 513 P.2d 697, 699-700 (1973).

Therefore,

IT IS HEREBY ORDERED that the "Order Denying Petition to Vacate Convictions in Cr. Nos. 98-017K and 98-215K and to

Release Petitioner from Custody" filed on May 15, 2003 in the Circuit Court of the Third Circuit is affirmed.

DATED: Honolulu, Hawai'i, October 28, 2004.

On the briefs:

David H. Lawton
for petitioner-appellant.

Linda L. Walton,
Deputy Prosecuting Attorney,
County of Hawai'i,
for respondent-appellee.

Acting Chief Judge

Associate Judge

Associate Judge