

NO. 25993

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

EDMUND M. ABORDO, Petitioner-Appellant, v.
STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE FIRST CIRCUIT COURT
(S.P.P. NO. 03-1-0028)

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Edmund M. Abordo (Abordo) appeals the "Findings of Fact, Conclusions of Law, and Order Dismissing Petition to Vacate, Set Aside, o[r] Correct Judgment or to Release Petitioner from Custody" filed on July 15, 2003, pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 40, in the Circuit Court of the First Circuit (circuit court).¹

On appeal, Abordo contends (1) the circuit court erred in denying him a hearing, pursuant to HRPP Rule 40, on his "Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody" (Rule 40 Petition); (2) the Hawai'i Paroling Authority (HPA) violated his constitutional right against self-incrimination by requiring him to participate in the Hawaii Sexual Offenders Treatment Program (HSOTP), where he would have to admit his sex crimes while he claimed "actual innocence"; (3) HPA was forcing him to commit perjury by requiring him to complete the HSOTP; and (4) HPA violated his constitutional

¹ The Honorable Derrick H.M. Chan presided.

rights by requiring him to complete the HSOTP program, before paroling him, while he was in a facility that did not have the program and while he was claiming actual innocence in the federal courts.

Abordo also contends (5) HPA did not recognize his constitutional right "to petition the government for redress of grievances against Abordo's conviction and sentence"; (6) HPA retaliated against him for suing HPA for not following its rules and laws; (7) the "Deputy Attorney General failed to answer or deny any of the issues that Abordo cited in his memorandum of law in support"; and (8) the circuit court abused its discretion by failing to grant his "Motion for Relief of Judgment or Order Pursuant to H.R.Civ.P. Rule 60" and to apply existing case law.

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

(1) The HPA did not violate Abordo's due process rights in denying his parole. The "HPA has broad statutory discretion in determining whether to grant or deny parole to inmates and to set conditions therefor." Turner v. Hawai'i Paroling Authority, 93 Hawai'i 298, 302, 1 P.3d 768, 772 (App. 2000). "An inmate who has been convicted of a sex crime in a prior adversarial setting, whether as the result of a bench trial, jury trial, or plea agreement, has received the minimum protections required by due process." Id. at 309, 1 P.3d at 779

(internal quotation marks, citations, and brackets in original omitted).

(2) Abordo does not assert any new claims in his Rule 40 Petition for which relief can be provided. The issues currently presented were previously raised and ruled upon, waived, or have no merit. Therefore, Abordo did not show a colorable claim, and the circuit court properly denied a hearing. Barnett v. State, 91 Hawai'i 20, 26, 979 P.2d 1046, 1052 (1999); HRPP Rule 40.

Therefore,

IT IS HEREBY ORDERED that the "Findings of Fact, Conclusions of Law, and Order Dismissing Petition to Vacate, Set Aside, o[r] Correct Judgment or to Release Petitioner From Custody" filed on July 15, 2003 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, January 27, 2005.

On the briefs:

Edmund M. Abordo,
petitioner-appellant pro se

Lisa M. Itomura,
Deputy Attorney General,
for respondent-appellee.

Acting Chief Judge

Associate Judge

Associate Judge