

NOT FOR PUBLICATION

NO. 26045

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

ROBERT C. JONES, Petitioner-Appellant, v
STATE OF HAWAI'I, Respondent-Appellee

K. HAMAKAHO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2005 NOV 29 PM 1:45

FILED

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(S.P.P. NO. 03-1-0003K (Cr. No. 95-132K))

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Robert C. Jones (Jones) appeals from the "Amended Order Denying Robert C. Jones' Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody filed on August 8, 2003, in the Circuit Court of the Third Circuit^{1/} (circuit court).

On appeal, Jones contends (1) the circuit court erred when it denied him a full and fair evidentiary hearing on his June 5, 2003 Petition for Post-Conviction Relief (Petition)^{2/}; (2) the circuit court erred when it denied his Petition because he was denied effective assistance of counsel in violation of his rights under the Hawai'i and United States Constitutions; (3) the

^{1/} The Honorable Ronald Ibarra presided.

^{2/} The titles Petition for Post-Conviction Relief and Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody are used interchangeably to refer to the same document.

circuit court illegally sentenced him to a mandatory minimum sentence of ten years of imprisonment by using at sentencing alleged facts that had not been submitted to the jury and had not been found to be beyond a reasonable doubt; and (4) his due process rights as guaranteed by Article I, § 14, of the Hawai'i Constitution and the Fifth and Fourteenth Amendments to the United States Constitution were violated when he was shackled during sentencing.

Upon careful review of the record and briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we hold the circuit court did not err in denying, without an evidentiary hearing, Jones's claims in his Petition for Post-Conviction Relief, with the exception of Jones's claim that his counsel was ineffective in not communicating to the prosecutor or circuit court Jones's desire to accept the State's offer to Jones that if Jones entered a plea of guilty to Manslaughter, the State would dismiss the charge of Murder in the Second Degree. Hawai'i Rules of Penal Procedure Rule 40(f); Barnett v. State, 91 Hawai'i 20, 26, 979 P.2d 1046, 1052 (1999).

Therefore, the "Amended Order Denying Robert C. Jones' Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody filed on August 8, 2003, in the Circuit Court of the Third Circuit is affirmed in part and vacated in

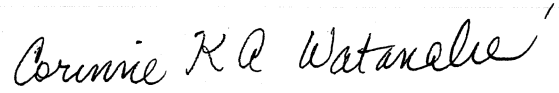
part and remanded for an evidentiary hearing on Jones's ineffectiveness of counsel claim on the State's plea offer.

DATED: Honolulu, Hawai'i, November 29, 2005.

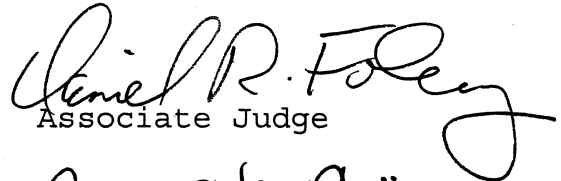
On the briefs:

Usha Kilpatrick Kotner
for Petitioner-Appellant.

Linda L. Walton,
Deputy Prosecuting Attorney,
County of Hawai'i,
for Respondent-Appellee.



Acting Chief Judge



Associate Judge



Associate Judge