

NO. 26365

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
EUGENE JAMES HUTCH, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(S.P.P. NO. 02-1-0074)

NOHIMA I. YARA
DEPT. APPELLATE COURTS
STATE OF HAWAII

2005 MAY 12 AM 9:05

FILED

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Eugene James Hutch (Hutch) appeals from the "Findings of Fact, Conclusions of Law, and Order Dismissing Petition for Post-Conviction Relief" filed on January 13, 2004 in the Circuit Court of the First Circuit (circuit court).^{1/}

On December 18, 1996, Hutch pled guilty to Robbery in the Second Degree in violation of Hawaii Revised Statutes (HRS) § 708-841(1) (a) (1993). On February 19, 1997, Hutch was sentenced to ten years of imprisonment, to be served concurrently with the sentences in two of his other cases.

On October 22, 2002, Hutch filed a Petition for Post-Conviction Relief (Rule 40 Petition) pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 40. In his Rule 40 Petition, Hutch claimed that (1) the Parole Board was prejudiced against him

^{1/} The Honorable Karl K. Sakamoto presided.

because of his race; (2) because of this prejudice, Hutch was denied equal protection under the Fifth Amendment to the United States Constitution to "be treated alike"; (3) his parole was illegally revoked for a first violation; (4) prison conditions interfered with his parole opportunities; (5) he was punished for helping inmates on prison rights; and (6) the circuit court denied him access to be heard. The circuit court denied Hutch's Rule 40 Petition without a hearing and entered its "Findings of Fact, Conclusions of Law, and Order Dismissing Petition for Post-Conviction Relief" on January 13, 2004.

In his appeal, Hutch contends: (1) the Parole Board was prejudiced against him because of his race; (2) Hutch's due process rights were violated because of his race and legal work done for himself and others; (3) his parole was illegally revoked for a first violation; (4) prison conditions (unconstitutional misconducts and denial of prison programs) interfered with his parole opportunities; (5) he was denied access to the courts; and (6) the circuit court denied him access to be heard.

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

(1) Hutch did not assert any new claims in his Rule 40 Petition for which relief can be provided. The issues presented were previously raised and ruled upon, waived, or have no merit. HRPP Rule 40(g)(2). The circuit court properly denied Hutch's

Rule 40 Petition without a hearing because Hutch 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)).

(2) Hutch was not denied access to the courts. Hutch's Rule 40 Petition was filed in and reviewed by the circuit court.

Therefore,

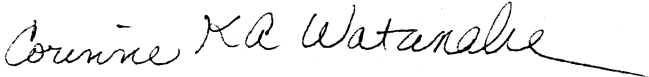
IT IS HEREBY ORDERED that the "Findings of Fact, Conclusions of Law, and Order Dismissing Petition for Post-Conviction Relief" filed on January 13, 2004 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, May 12, 2005.

On the briefs:

Eugene James Hutch,
defendant-appellant pro se.

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


Acting Chief Judge


Associate Judge


Associate Judge