

NO. 26557

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

WILLIAM WENDELL RAMSEY, JR., Petitioner-Appellant v.
STATE OF HAWAI'I, Respondent-Appellee

EUGENE L. SARANO
CLERK OF THE COURTS
STATE OF HAWAI'I

2005 JUL 28 AM 8:44

FILED

APPEAL FROM THE SECOND CIRCUIT COURT
(S.P.P. NO. 03-1-0016(3))

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant pro se William Wendell Ramsey, Jr. (Ramsey) appeals from the Order Denying, Without Evidentiary Hearing, Petition for Post-Conviction Relief (Order) filed on April 19, 2004 in the Circuit Court of the Second Circuit^{1/} (circuit court). Ramsey's Petition for Post-Conviction Relief (Petition) was filed on September 25, 2003 pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 40.

On January 28, 1994, Ramsey was indicted for Burglary in the First Degree in violation of Hawaii Revised Statutes (HRS) § 708-810(1)(c) (1993) and Sexual Assault in the Third Degree in violation of HRS § 707-732(1)(c) (1993). A jury found Ramsey guilty of both charges, and Judgment was entered on October 28, 1994. Ramsey did not file an appeal from the Judgment.

^{1/} The Honorable Joseph E. Cardoza presided.

On March 17, 1997, pursuant to HRPP Rule 40, Ramsey filed a Petition for Post-Conviction Relief under S.P.P. No. 97-0004(3) (First Petition).^{2/} Ramsey alleged, among other things, the following grounds for his ineffective assistance of counsel claim:

Counsel never performed an investigation into the alleged incidents to establish defendant's innocence. Counsel was aware of the relations between Defendant and Prosecutor and between members of the jury and the prosecutor and refused to motion for a withdrawl [sic]. Counsel failed to move for a speedy trial as requested by Defendant. Counsel failed to make Motions requested by the Defendant. Counsel failed to question witness or to cross examine them during the course of the Trial. Counsel failed to Appeal Defendant's case as requested by the Defendant and advised him to shut-up and do his damned time. During the investigation by the local police department the questioning of Defendant was done without the presence of an attorney and while Defendant was intoxicated. Counsel failed to raise any issues in this regard. The police made promises to the Defendant which could have been construed as coercion. Counsel failed to withdraw as Counsel at the request of Defendant because Defendant was going to hire attorney Richard Berman. Counsel failed to advise me of the results of taking the witness stand in my own behalf.

The circuit court filed its Decision and Order Denying Rule 40 Petition on September 30, 1997. The circuit court concluded that Ramsey's claims were patently frivolous and without a trace of support either in the record or from any new evidence submitted by Ramsey and that all grounds Ramsey set forth had been previously waived by his failure to file a timely appeal.

^{2/} This court takes judicial notice of the records and files in Cr. No. 94-0037 and S.P.P. No. 97-0004(3) in the Circuit Court of the Second Circuit and S. Ct. Nos. 21116 and 23288.

Ramsey appealed the denial of his First Petition. On January 14, 1999, this court vacated the part of the circuit court's decision concerning Ramsey's claims that (1) his conviction was unconstitutional because the jury chairperson coerced three of the other jurors into finding him guilty; (2) he suffered from the ineffective assistance of counsel when his Trial Counsel failed to properly advise him on his decision to testify at trial; and (3) he suffered from the ineffective assistance of counsel when his Trial Counsel did not file an appeal on his behalf. This court affirmed the remainder of the circuit court's decision and ordered the circuit court to hold an HRPP Rule 40 evidentiary hearing on these claims and to permit Ramsey to file an amended HRPP Rule 40 petition.

On April 13, 1999, the State filed a Motion for Evidentiary Hearing. On August 9, 1999, Ramsey filed an Amended Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody (Amended Petition), in which he alleged the following grounds for his ineffective assistance of counsel claim:

a) Ineffective assistance of counsel. Counsel never performed an investigation into the alleged incidents to establish defendant's innocence. Counsel was aware of the relations between Defendant and the Prosecutor and members of the jury and refused a motion for withdrawal [sic]. Counsel failed to move for a speedy trial as requested. Counsel failed to make motions requested by Defendant. Counsel failed to question witnesses or to cross-examine them during the course of the trial. Counsel failed to appeal Defendant's convictions as requested by Defendant and advised me to "shut up and do by [sic] damned time." Counsel failed to raise as an issue that I was questioned by

the police while intoxicated and without counsel and was made promises that could be construed as coercion. Counsel failed to move to withdraw as counsel despite being requested to by me. Counsel failed to advise me of the results of taking the witness stand in my own behalf. Trial counsel failed to consolidate Defendant's probation violation charge with the fore-mentioned criminal charges thereby increasing his mandatory minimum sentence. Trial counsel failed to raise [sic] Ignorance or mistake of fact (pursuant to Hawaii Revised Statutes, section 702-218) as a jury instruction or defense. Trial counsel failed to raise defendant's intoxication to negative the requisite state of mind necessary for a conviction. Trial counsel failed to raise the issue of mental competency of Defendant to face trial.

At the September 7, 1999 evidentiary hearing, Ramsey's Trial Counsel testified that when she met with Ramsey, she tried to have a private investigator with her at the meetings. When asked why she had the private investigator present, she responded that she made that decision after speaking with Dr. Logan (who was treating Ramsey for depression. She further testified that "before trial as I was meeting with [Ramsey], he presented me with his prescription bottles, and I was quite surprised. He was being prescribed heavy medications. I didn't know if he was taking them. The doctor was David Logan. So with Mr. Ramsey's authorization, I contacted Dr. Logan." Ramsey's counsel then objected as to relevance, which objection the circuit court overruled. Ramsey's Trial Counsel was not questioned further concerning any medication Ramsey might have been taking. Ramsey's Trial Counsel further testified that (1) she discussed with Ramsey his right to testify or not testify and the fact that the jury could not hold it against him if he chose not to

testify, (2) Ramsey was committed to testifying at trial because he was adamant about his innocence, and (3) when Ramsey decided to testify, she reviewed with Ramsey how to conduct himself when he testified.

On February 18, 2000, the circuit court filed its Findings of Fact and Conclusions of Law, in which it denied Ramsey's Amended Petition. Ramsey appealed the denial of his Amended Petition, and on August 28, 2001, this court affirmed the circuit court's denial.

On September 25, 2003, Ramsey filed the Petition that is the subject of the appeal before this court. Ramsey claimed ineffective assistance of counsel based on the following:

[My Trial Counsel] failed to warn me of testifying on the witness stand under the influence of an antidepressant medication haldol, I was under psychiatric [sic] treatment and on heavy medication - antidepressant haldol. [My Trial Counsel] failed to warn me of testifying while I was under the influence of heavy medication hadol [sic], she also testified at hearing. [My Trial Counsel] testified at Rule 40 hearing Sept. 1999 that she knew I was under the heavy medication haldol and on psychiatric [sic] treatment with doctor - she had me take evaluation psychiatric [sic] with Dr. Logan. [My Trial Counsel] testified to knowingly, new [sic] that I was under the influence of a heavy medication called haldol and she still allowed me to testify on and under the medication haldol, which caused me to sleep at trial, act out of order on the witness stand, and caused me to incriminate myself on witness stand. She could have prevented this. The jury found me guilty due to my actions on witness stand.

Without an evidentiary hearing, the circuit court denied the Petition. The circuit court concluded that "(1) the issue sought to be raised has been previously ruled upon or was knowingly and understandingly waived by Petitioner; and (2) Petitioner's claims

are patently frivolous and without a trace of support either in the record or from other evidence submitted by Petitioner."

On appeal, Ramsey contends the circuit court erred in denying his Petition because he raised a new and different issue that had not been waived or previously ruled upon.

The circuit court was correct in denying the Petition because the issue Ramsey raised was deemed ruled upon or was knowingly waived. Assuming arguendo that Ramsey did not waive the issues in the Petition, the circuit court was correct in denying the Petition without a hearing because Ramsey's claim was patently frivolous and was without a trace of support either in the record or from other evidence submitted by Ramsey.

We affirm the Order Denying, Without Evidentiary Hearing, Petition for Post-Conviction Relief filed on April 19, 2004 in the Circuit Court of the Second Circuit.

DATED: Honolulu, Hawai'i, July 28, 2005.

On the briefs:

William Wendell Ramsey, Jr.,
Petitioner-Appellant pro se.

Benjamin M. Acob,
Deputy Prosecuting Attorney,
County of Mau'i,
for Respondent-Appellee.


Chief Judge


Associate Judge


Associate Judge