

NO. 26225

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

SAMUEL COOPER, JR., Petitioner-Appellant, v.
STATE OF HAWAI'I, Respondent-Appellee

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STATE OF HAWAII

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P.P. NO. 02-1-0063 (Cr. No. 00-1-0474))

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Samuel Cooper Jr. (Cooper) appeals from the Amended Findings of Fact, Conclusions of Law, and Order Denying Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner From Custody (Rule 40 Petition) filed, pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 40, on October 24, 2003 in the Circuit Court of the First Circuit (circuit court).^{1/} Cooper's appeal stems from his November 3, 2000 guilty plea, pursuant to a plea agreement, to Murder in the Second Degree for the murder of Fred Cramer. On appeal, Cooper contends that (1) his conviction was obtained by a plea of guilty, which was unlawfully induced and not made voluntarily with the understanding of the consequences of the plea; (2) he was denied effective assistance of counsel; and (3) his conviction was obtained by a violation of due process.

^{1/} The Honorable Karen S. S. Ahn presided.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues as raised by the parties, we conclude:

(1) The circuit court did not err in determining that Cooper's guilty plea was neither unlawfully induced nor made unknowingly or involuntarily without the understanding of the consequences. Foo v. State, 106 Hawai'i 102, 111-12, 102 P.3d 346, 355-56 (2004); State v. Merino, 81 Hawai'i 198, 217, 915 P.2d 672, 691 (1996); State v. Jim, 58 Haw. 574, 575-76, 574 P.2d 521, 522-23 (1978); HRPP Rule 32(d) and Rule 11.

(2) The circuit court did not err in finding that parole eligibility did not constitute manifest injustice entitling Cooper to the withdrawal of his guilty plea. Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Sanchez v. United States, 572 F.2d 210, 211 (9th Cir. 1977); Williamson v. Hawai'i Paroling Authority, 97 Hawai'i 183, 194, 35 P.3d 210, 221 (2001); State v. Nguyen, 81 Hawai'i 279, 288, 916 P.2d 689, 698 (1996); Eli v. State, 63 Haw. 474, 479, 630 P.2d 113, 117 (1981); Hawaii Revised Statutes § 706-669(8) (1993); Haw. Admin. Rules § 23-700-25(f).

(3) The circuit court did not err in finding no specific errors or omissions on the part of Cooper's trial counsel or appellate counsel that reflected a lack of skill,

judgment, or diligence. State v. Pacheo, 96 Hawai'i 83, 94, 26 P.3d 572, 583 (2001); State v. Samuel, 74 Haw. 141, 158, 838 P.2d 1374, 1382 (1992); State v. Kahalewa[i], 54 Haw. 28, 30, 501 P.2d 977, 979 (1972).

Therefore,

IT IS HEREBY ORDERED that the Amended Findings of Fact, Conclusions of Law, And Order Denying Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner From Custody filed on October 24, 2003, in the Circuit Court of the First Circuit is affirmed.

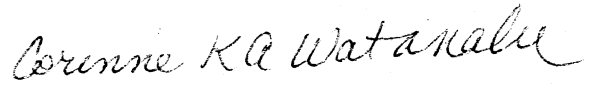
DATED: Honolulu, Hawai'i, January 27, 2006.

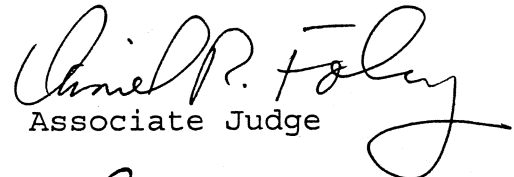
On the briefs:

Stuart N. Fujioka
for Petitioner-Appellant.

Daniel H. Shimizu,
Deputy Prosecuting Attorney,
City and County of Honolulu,
and

Lisa M. Itomura,
Deputy Attorney General,
for Respondent-Appellee.


Acting Chief Judge


Associate Judge


Associate Judge