

NOT FOR PUBLICATION

NO. 26720

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
EDWIN CARINEO, Defendant-Appellant

NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAI'I

2006 FEB -9 AM 8:33

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT  
(CR. NO. 98-0230)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Edwin Carineo (Carineo) appeals from the "Order Denying Petition for Reconsideration in the Denial of Petitioner's Motion to Correct Illegally Imposed Sentence Pursuant to Hawaii Rules of Penal Procedure Rule 40 for the Failure to Answer or Respond in a Timely Manner to Motion Pursuant to Hawaii Rules of Appellate Procedure Rule 28"<sup>1/</sup> filed on July 1, 2004 in the Circuit Court of the Fifth Circuit (circuit court).<sup>2/</sup>

On appeal, Carineo argues that his "Petition for Reconsideration in the Denial of Petitioner's Motion to Correct Illegally Imposed Sentence Pursuant to Hawaii Rules of Penal Procedure Rule 40 for the Failure to Answer or Respond in a Timely Manner to Motion Pursuant to Hawaii Rules of Appellate

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<sup>1/</sup> This court is without jurisdiction to consider any of Carineo's arguments concerning the circuit court's order denying his motion to correct his illegally imposed sentence.

<sup>2/</sup> The Honorable Clifford L. Nakea presided.

Procedure Rule 28" (Petition for Reconsideration), filed May 4, 2004, should have been granted because (1) he should not have been charged with Escape in the Second Degree and (2) the State of Hawaii (the State) failed to respond to Carineo's "Motion to Correct Illegally Imposed Sentence Pursuant to Hawai'i Rules of Penal Procedure Rule 35" (Rule 35 Motion), filed August 1, 2003, in a timely manner as prescribed in the Hawaii Rules of Appellate Procedure (HRAP) Rule 28.

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) Carineo was not charged with Escape in the Second Degree in the underlying criminal case in this appeal. Carineo was charged with Escape in the Second Degree in Cr. No. 98-0198, which is the subject of a separate appeal (S. Ct. No. 26719). Therefore, Carineo's first issue on appeal regarding whether he should have been charged with Escape is not before this court in this appeal and therefore will not be addressed.

(2) Carineo's argument that HRAP Rule 28 governs the State's response to an HRPP Rule 35 motion is patently frivolous.

Therefore,

IT IS HEREBY ORDERED that the "Order Denying Petition for Reconsideration in the Denial of Petitioner's Motion to

Correct Illegally Imposed Sentence Pursuant to Hawaii Rules of Penal Procedure Rule 40 for the Failure to Answer or Respond in a Timely Manner to Motion Pursuant to Hawaii Rules of Appellate Procedure Rule 28" filed on July 1, 2004 in the Circuit Court of the Fifth Circuit is affirmed.

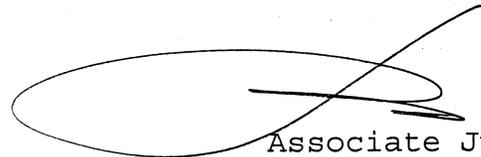
DATED: Honolulu, Hawai'i, February 9, 2006.

On the briefs:

Edwin Carineo,  
Defendant-Appellant pro se.

Tracy Murakami,  
Deputy Prosecuting Attorney,  
County of Kaua'i,  
for Plaintiff-Appellee.

  
Chief Judge

  
Associate Judge

  
Associate Judge