

NOT FOR PUBLICATION

NO. 26876

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

LORIN JAMES MCRAE, Petitioner-Appellant, v.
STATE OF HAWAI'I, Respondent-Appellee

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

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P.P. NO. 04-1-0044 (Cr. No. 96-1066))

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Lorin James McRae (McRae) appeals from the Order Denying Petition for Post-Conviction Relief Without Hearing (Order) filed on August 31, 2004 in the Circuit Court of the First Circuit^{1/} (circuit court). Pursuant to Hawai'i Rules of Penal Procedure Rule 40, McRae filed his Petition for Post-Conviction Relief (Rule 40 Petition) on May 18, 2004.

In his Rule 40 Petition, McRae alleged that (1) prison staff denied him access to the courts, (2) his parole was wrongfully revoked, (3) he had to "sneak help from an inmate jailhouse lawyer," and (4) prison staff refused to transfer him to a minimum security facility.

On June 21, 2004, the State filed an answer to the Rule 40 Petition and asked the circuit court to take judicial notice of the records and files in Cr. No. 96-1066, the underlying case

^{1/} The Honorable Derrick H.M. Chan presided.

of the Rule 40 Petition. The State also set forth the history of the underlying case: McRae was serving a ten-year sentence for Burglary in the First Degree. The Hawaii Paroling Authority (HPA) had set McRae's minimum term of imprisonment in Cr. No. 96-1066 at four years and six months. The HPA released McRae on parole on January 9, 2003. At first, McRae complied with his parole conditions, but then he began using illegal drugs and was terminated from the Victory Ohana substance abuse program on April 14, 2003. Upon his termination from Victory Ohana, McRae's parole was suspended, and a warrant for his arrest was issued. McRae was arrested on November 21, 2003. Therefore, because his whereabouts were not known from April 14 to November 21, 2003, his parole was suspended during that period.

At a February 18, 2004, hearing before the HPA to determine whether McRae had violated the terms and conditions of his parole, McRae, after conferring with his public defender, pled guilty to violating his parole conditions. McRae did not ask to submit documents or other evidence or to have a doctor testify for him at the hearing. On or about February 20, 2004, the HPA sent to McRae a copy of the "Hearing of Violation of Parole Order and Finding of the Hawaii Paroling Authority,"^{2/} which stated that based on evidence presented at the February 18,

^{2/} The State attached to its answer a copy of the "Hearing of Violation of Parole Order and Finding of the Hawaii Paroling Authority" as Exhibit A.

2004 hearing and McRae's "pleas of guilty to the violations as charged" (possession and control of methadone on 2/22/03, 3/14/03, 3/21/03, and 4/12/03); "failure to abide by the rules of Victory Ohana"; and "failure to notify whereabouts after leaving Victory Ohana"), the HPA was revoking McRae's parole for the balance of the maximum sentence. The notice further stated that due to McRae's suspension, his maximum date of imprisonment had been extended and the new maximum date would expire on March 22, 2008.

The State also contended in its answer that McRae had waived the issues in his Rule 40 Petition because he had previously filed a petition for post-conviction relief under S.P.P. No. 04-1-0022. The State argued that McRae could have and should have raised his Rule 40 Petition claims in the prior petition and he had failed to submit any evidence of extraordinary circumstances to justify his failure to do so.

On August 31, 2004, the circuit court denied without a hearing McRae's Rule 40 Petition as "without merit, patently frivolous, and without a trace of support, either in the record or from other evidence submitted by [McRae]." McRae subsequently, on September 20, 2004, filed an opposition to the State's answer.

McRae timely filed a notice of appeal.

Upon careful review of the record and briefs submitted by the parties and having given due consideration to the arguments advanced and the issues as raised by the parties, we conclude that McRae's appeal is without merit.

Therefore,

The Order Denying Petition for Post-Conviction Relief Without Hearing filed on August 31, 2004 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, March 24, 2006.

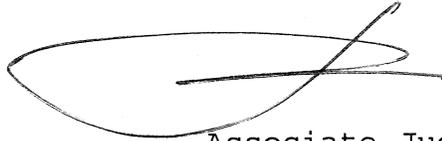
On the briefs:

Lorin James McRae,
Petitioner-Appellant pro se.

Lisa M. Itomura and
Bryan C. Yee,
Deputy Attorneys General,
for Respondent-Appellee.



Acting Chief Judge



Associate Judge



Associate Judge