

## NOT FOR PUBLICATION

NO. 26969

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

DARRELL BACLAAN, Petitioner-Appellant, v.  
STATE OF HAWAI'I, Respondent-Appellee

NORMA T. YARA  
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STATE OF HAWAII

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(S.P.P. NO. 04-1-0047 (Cr. No. 01-1-1240))

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Darrell Baclaan (Baclaan) appeals from the "Findings of Fact, Conclusions of Law, and Order Denying Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody Filed May 20, 2004, Without a Hearing" (Order) filed on October 28, 2004 in the Circuit Court of the First Circuit<sup>1/</sup> (circuit court). Baclaan filed his Petition for Post-Conviction Relief (Rule 40 Petition) on May 20, 2004, pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 40.

In the underlying criminal case, Baclaan entered a plea of no contest to Unauthorized Entry into Motor Vehicle, in violation of Hawaii Revised Statutes (HRS) § 708-836.5 (Supp. 2005). The circuit court sentenced Baclaan to five years of imprisonment.

<sup>1/</sup> The Honorable Virginia Lea Crandall presided.

The Hawaii Paroling Authority (HPA) determined that Baclaan's minimum sentence would be served as of June 3, 2003, but his term of parole would not expire until May 29, 2006. Baclaan was given a copy of the Order of Parole and terms and conditions of his parole on June 3, 2003; Baclaan signed the Order of Parole, acknowledging that he understood and accepted the terms and conditions of his parole. The conditions included, among others, that Baclaan would submit to drug testing at the discretion of his parole officer, would not use illegal drugs, and would report to his parole officer as directed. Baclaan was released on parole from prison on June 4, 2003.

After his release, Baclaan violated the conditions of his release and was arrested. At his February 4, 2004 revocation hearing, Baclaan pled guilty to violating his parole by possessing illegal drugs, failing to take a drug test, and failing to report to his parole officer. The HPA revoked his parole for the balance of his five-year maximum sentence.

On May 20, 2004, Baclaan filed his Rule 40 Petition. Baclaan alleged:

- (1) His plea was not made voluntarily or with an understanding of the nature of the charge and consequences of the plea.
- (2) His conviction was obtained by:
  - (a) use of coerced confession;

(b) use of evidence obtained pursuant to an unconstitutional search and seizure;

(c) use of evidence obtained pursuant to an unlawful arrest;

(d) a violation of his privilege against self-incrimination;

(e) the State's failure to disclose evidence favorable to him;

(f) a violation of the protection against double jeopardy; and

(g) a grand or petit jury that was unconstitutionally selected and impaneled.

(3) He was denied effective assistance of counsel.

(4) He was denied his right to appeal.

(5) He should have been sentenced to a drug treatment program instead of prison under 2002 Haw. Sess. L. Act 161, § 4 at 572-73 (HRS § 706-625) because he was a first-time offender.

(6) He was denied his rights to the prison library.

(7) He was discriminated against by the sex offender treatment program therapist because he could not spell and was racially profiled.

(8) He did not received effective assistance of counsel at his parole hearing.

(9) He served two years and six months instead of the two-year minimum sentence set by the HPA; the extra six months was a double jeopardy sentencing.

(10) His continued confinement at Halawa Medium Security Facility violated his due process rights because he was a minimum status inmate and should have been sent to Waiawa or Kulani minimum facilities.

(11) He was not charged or convicted to warrant participation in the work furlough, parenting, or mathematics programs and was discriminated against because he was not being allowed to participate in the work furlough program.

(12) He was denied access to the prison law library and the prison staff denied his request to make copies of his Rule 40 Petition.

(13) He was being kept in prison unable to be paroled because he had not completed the imposed "Cash-Box Substance Abuse Treatment Program."

(14) His minimum and maximum sentencing terms set by the HPA violated his statutory and common law rights of placement and confinement.

(15) He was forced to enter guilty pleas to his parole violations at his parole revocation hearing.

(16) He should have counsel to prepare a memorandum of law in support of all of his grounds for the Rule 40 Petition.

The Office of the Prosecuting Attorney filed an answer on June 21, 2004, and the Department of the Attorney General filed its answer on June 25, 2004. On July 1, 2004, Baclaan filed his objections to the State's answer. In its Order, the circuit court found that Baclaan's claims were without merit, patently frivolous, and without a trace of support in the record and denied Baclaan's Rule 40 Petition without a hearing.

In his appeal, Baclaan contends:

1. Prison staff enforced a repealed administrative rule and retaliated against inmates by denying the inmates copies of legal documents.

2. His parole was revoked in violation of a "recent bill."

3. The circuit court should have appointed counsel for him on his Rule 40 Petition.

Baclaan also raises for the first time on appeal:

4. He had to "sneak help" from jailhouse lawyers despite the Hawai'i Supreme Court's decision in Hutch v. State, 107 Hawai'i 411, 114 P.3d 917 (2005).

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 raised by the parties, we hold:

(1) The circuit court properly found that Baclaan's claims were patently frivolous and without support in the record, and

(2) HRS § 353-66(f) (Supp. 2002) did not apply since the parole violations at issue were not Baclaan's "first violation of the terms and conditions" of parole.<sup>2/</sup> State v. Haugen, 104 Hawai'i 71, 85 P.3d 178 (2004).

Therefore,

The "Findings of Fact, Conclusions of Law, and Order Denying Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody Filed May 20, 2004, Without a Hearing" filed on October 28, 2004 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, June 28, 2006.

On the briefs:

Darrell Baclaan,  
Petitioner-Appellant pro se.

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

  
Acting Chief Judge

  
Associate Judge

  
Associate Judge

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<sup>2/</sup> On August 16, 1990, after serving one year of imprisonment, Baclaan was released from federal prison and began serving three years of supervised release. On January 8, 1991, the United States District Court for the District of Hawai'i revoked Baclaan's supervised release for his admitting that he had smoked crystal methamphetamine and for his testing positive for drugs on four occasions. United States v. Baclaan, 948 F.2d 628, 629-30 (9th Cir. 1991).