

NO. 27441

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

RICHARD M. CALDERWOOD, Petitioner-Appellant,
STATE OF HAWAII, Respondent-Appellee

FILED
2006 AUG 25 AM 9:48
CLM. RIVARDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(S.P.P. NO. 05-1-0013(1) (Cr. No. 93-0518))

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant pro se Richard M. Calderwood (Calderwood) appeals from the "Findings of Fact, Conclusions of Law, and Order Denying Petition for Post-Conviction Relief" filed on July 26, 2005 in the Circuit Court of the Second Circuit^{1/} (circuit court). Calderwood filed his Petition for Post-Conviction Relief (Rule 40 Petition) on May 9, 2005 pursuant to Hawaii Rules of Penal Procedure (HRPP) Rule 40.

In the underlying criminal case, the State charged Calderwood with Murder in the Second Degree, in violation of Hawaii Revised Statutes (HRS) § 707-701.5 (1993). On or about May 29, 1993, Calderwood repeatedly bashed the head of Alexander Davis (Davis) against a metal drum that was partially filled with concrete and left Davis unconscious on the ground. A few hours later, Calderwood returned to the scene to retrieve his knife, but failed to help Davis in any manner. Calderwood fled from Hawaii. A few months later Davis died from the injuries

^{1/} The Honorable Joel E. August presided.

inflicted by Calderwood. Calderwood was arrested on a bench warrant in November 1993. A jury found Calderwood guilty as charged, and the circuit court sentenced him to life imprisonment with the possibility of parole.

Calderwood filed an appeal on August 26, 1994. On September 10, 1996, this court in No. 18423 affirmed Calderwood's conviction. Calderwood's writ of certiorari to the Hawai'i Supreme Court was denied.

While Calderwood's appeal was pending, the Hawai'i Paroling Authority (HPA) held a hearing on November 18, 1994 to determine Calderwood's minimum term of imprisonment. Calderwood and his attorney attended the hearing. On December 27, 1994, the HPA entered its order and set Calderwood's minimum term of imprisonment at thirty-five years. The HPA also stated that it would reopen the hearing after Calderwood's appeal had been adjudicated. On September 23, 2004, the HPA held a second hearing. Calderwood and his attorney attended the hearing. By order dated September 28, 2004, the HPA affirmed Calderwood's minimum term at thirty-five years.

In his May 9, 2005 Rule 40 Petition, Calderwood argued:

(1) The HPA violated his right to due process in setting his minimum term of imprisonment in accordance with Level III at thirty-five years when it did not provide a written reason for its deviation from Level I;

(2) The HPA violated several statutes, administrative rules, and its own Guidelines in setting his minimum sentence; and

(3) Governor Linda Lingle violated his right to due process by not responding to letters he sent her complaining about the HPA's conduct.

The circuit court, without holding a hearing, found that Calderwood's claims were "patently frivolous and without a trace of support in the record" and denied his Rule 40 Petition.

On appeal, Calderwood contends:

(1) The circuit court was arbitrary in denying his Rule 40 Petition.

(2) The circuit court reversibly erred when it failed to acknowledge that the HPA did not take into account all of the factors under the applicable rules when the HPA determined his minimum term of imprisonment. According to Calderwood, if the HPA had considered all of the factors under the applicable rules, then the HPA would not have set his minimum term of imprisonment at thirty-five years.

(3) The circuit court reversibly erred when it failed to acknowledge that Governor Lingle had violated his right to due process by not responding to his letter of complaint regarding his minimum term.

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 conclude that Calderwood's claims were "patently frivolous and

. . . without trace of support either in the record or from other evidence submitted by the petitioner." HRPP Rule 40(f); Williamson v. Hawai'i Paroling Auth., 97 Hawai'i 183, 35 P.3d 210 (2001).

Therefore,

The "Findings of Fact, Conclusions of Law, and Order Denying Petition for Post-Conviction Relief" filed on July 26, 2005 in the Circuit Court of the Second Circuit is affirmed.


DATED: Honolulu, Hawai'i, August 25, 2006.

On the briefs:

Richard M. Calderwood,
Petitioner-Appellant pro se.

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


Chief Judge


Associate Judge


Associate Judge