

NO. 26752

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

MEINI HAFOKA, aka WALLY HAFOKA, aka WORLI HAFOKA,
Petitioner/Appellant,
v.
STATE OF HAWAI'I, Respondent/Appellee

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(S.P.P. NO. 03-1-0018(3))
(Cr. Nos. 97-0169(3), 97-0376(3), 97-0790(3), 97-0815(3))

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Meini Hafoka, aka Wally Hafoka, aka Worli Hafoka, (Hafoka) appeals from the "Findings of Fact, Conclusions of Law, and Order Denying Without Hearing Petition to Vacate, Set Aside, or Correct Judgment or Release Petitioner from Custody" (Order Denying Petition) filed on July 7, 2004 in the Circuit Court of the Second Circuit^{1/} (circuit court). Hafoka filed his petition for post-conviction relief (Rule 40 Petition) on November 20, 2003 pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 40.

In the underlying criminal cases, Hafoka entered no contest pleas as follows:

- Cr. No. 97-0169(3) -- one count of Sexual Assault in the Third Degree;
- Cr. No. 97-0376(3) -- one count of Bribery of a Witness;
- Cr. No. 97-0790(3) -- four counts of Theft in the Second Degree; and

^{1/} The Honorable Joseph E. Cardoza presided.

Cr. No. 97-0815(3) -- five counts of Theft in the Second Degree.

Prior to accepting his pleas, the circuit court informed Hafoka that he "could be getting 55 years maximum sentence, which could be doubled up to 110 years. That's the potential sentencings you're looking at with these particular charges. Do you understand that?" Hafoka answered "Yeah." Hafoka stated to the court that he wanted to enter his pleas. The circuit court also informed Hafoka that the court was not a party to "any kind of promises, deals, favors, offers, agreements, leniency -- agreements or bargains made to you by anyone in exchange for your plea" and that the court was "not promising you anything in return for your plea of no contest" nor "any leniency in return for your plea of no contest."

The circuit court sentenced Hafoka as follows:

Cr. No. 97-0169(3) -- five years;

Cr. No. 97-0376(3) -- five years;

Cr. No. 97-0790(3) -- five years on each of the four counts, to run concurrently; and

Cr. No. 97-0815(3) -- five years on each of the five counts, to run concurrently.

The court ordered that Hafoka's sentences in the four above cases were to run consecutively -- for a total of twenty years in prison.

On October 27, 1998, Hafoka filed appeals from the four cases. The Hawai'i Supreme Court consolidated the appeals and on May 10, 1999 issued its Summary Disposition Order affirming the judgments. On May 29, 2001, Hafoka, represented by Janet Miller (Ms. Miller), filed a petition in S.P.P. No. 01-1-0011(3), pursuant to HRPP Rule 40. In his petition, Hafoka alleged that neither the circuit court nor his trial counsel had suggested that he might receive consecutive sentences with respect to the

four cases and that his trial counsel was ineffective for failing to so inform him. On December 27, 2001, the circuit court filed its order denying the petition, finding the allegation patently frivolous and without a trace of support in the record or from other evidence submitted by Hafoka.

After a February 14, 2002 telephone conference with Hafoka, the circuit court, on February 26, 2002, granted Ms. Miller's motion to withdraw as counsel for Hafoka. Even though she had withdrawn as his counsel, Ms. Miller, on March 27, 2002, filed a notice of appeal on behalf of Hafoka, pro se, from the December 27, 2001 order.^{2/} On July 2, 2002, the Hawai'i Supreme Court dismissed the appeal for lack of appellate jurisdiction.

In his November 20, 2003 Rule 40 Petition, Hafoka alleged that Ms. Miller was ineffective in that she (1) failed to preserve Hafoka's right to appellate review of his trial counsel's ineffectiveness by (a) not informing him that he had to file a notice of appeal within 30 days of the denial of his petition in S.P.P. 01-1-0011(3), (b) not filing the notice of appeal until after the deadline had passed (which caused Hafoka's appeal to be dismissed for lack of appellate jurisdiction), and (c) failing to act expeditiously and to keep him properly advised of his rights and legal strategies or filing requirements; (2) made untrue allegations about Hafoka during a February 14, 2002 telephone hearing; and (3) failed to raise all of the issues surrounding trial counsel's ineffective assistance.

^{2/} The March 27, 2002 notice of appeal purported to amend a January 23, 2002 writing by Hafoka, in which he advised the circuit court of his intent to appeal the December 27, 2001 order. However, the record contained no evidence of the January 23, 2002 writing, and the Hawai'i Supreme Court held that absent notice of the January 23, 2002 writing, the March 27, 2002 notice of appeal was untimely. The court also noted that this was not Hafoka's first appeal from his convictions.

In its Order Denying Petition, the circuit court denied the Rule 40 Petition without a hearing, concluding that:

(1) Hafoka failed to show that Ms. Miller's failure to pursue his appeal resulted in either the withdrawal or substantial impairment of a potentially meritorious defense;

(2) The claim that Ms. Miller made untrue allegations about him in the telephone hearing was patently frivolous and without a trace of support either in the record or from other evidence submitted by Hafoka;

(3) Hafoka's claim that Ms. Miller failed to raise all issues surrounding his trial counsel's ineffective assistance was patently frivolous and without a trace of support either in the record or from other evidence submitted by Hafoka;

(4) Based on the record, Hafoka's allegations did not show any colorable claim, and therefore no hearing was necessary.

On appeal, Hafoka contends the circuit court erred by denying his Rule 40 Petition without a hearing and Ms. Miller's failure to raise his trial counsel's ineffectiveness amounted to ineffective assistance of counsel on her part.

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 Hafoka's appeal is without merit. Furthermore, Hafoka's Opening Brief fails to comply with Hawai'i Rules of Appellate Procedure (HRAP) 28(b)(4) and (7) in that it fails to specify, much less quote, the "finding or conclusion urged as error" and does not contain "the contentions of the appellant on the points presented and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on."

Therefore,

The "Findings of Fact, Conclusions of Law, and Order Denying Without Hearing Petition to Vacate, Set Aside, or Correct

Judgment or Release Petitioner from Custody" filed on July 7, 2004 in the Circuit Court of the Second Circuit is affirmed.

DATED: Honolulu, Hawai'i, June 22, 2007.

On the briefs:

Jeannie J. Park
for Petitioner-Appellant.


Chief Judge

Brandon L.K. Paredes,
Deputy Prosecuting Attorney,
County of Maui
for Respondent-Appellee.


Associate Judge


Associate Judge