

NO. 27499

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

PETER JACKSON, 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 FIRST CIRCUIT
(S.P.P. NO. 05-1-0018 (FC-Cr. No. 00-1-1075))

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Peter Jackson (Jackson) appeals from the "Order Denying Petition to Vacate and Set Aside Judgment Under Rule 40 of the Hawaii Rules of Penal Procedure, Filed on February 10, 2005" (Order) filed on August 26, 2005 in the Circuit Court of the First Circuit^{1/} (circuit court). Jackson filed his Petition to Vacate and Set Aside Judgment Under Rule 40 of the Hawaii Rules of Penal Procedure (Rule 40 Petition) on February 10, 2005, pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 40.

In the underlying criminal case, a jury found Jackson guilty of two counts of Sexual Assault in the Fourth Degree. The circuit court sentenced Jackson to 30 days of imprisonment and one year of probation, ordered him to pay fees, and filed its Judgment on September 25, 2000.

On October 9, 2000, Jackson filed a notice of appeal from the Judgment. On August 30, 2004, the Hawai'i Supreme Court issued its Summary Disposition Order, in which the court affirmed the Judgment, concluding that Hawaii Revised Statutes (HRS) § 707-733(1) was not unconstitutionally vague, Jackson did not

^{1/} The Honorable Richard W. Pollack presided.

have standing to raise a constitutional over-breadth challenge; the family court did not err in instructing the jury; and Jackson's standing to contest the constitutionality of HRS Chapter 846E was unclear because Jackson's sentence did not require Jackson to comply with that chapter. The family court subsequently revoked Jackson's probation and resentenced him to 30 days of imprisonment and one year of probation.

On February 10, 2005, Jackson filed his Rule 40 Petition, in which he alleged that he was denied effective assistance of trial counsel and appellate counsel. The State filed its answer on May 27, 2005. The circuit court filed its Order on August 26, 2005, denying Jackson's petition without a hearing. Jackson timely appealed.

On appeal, Jackson contends the circuit court (1) erred in denying him a hearing on his Rule 40 Petition where he showed a colorable claim of ineffective assistance of counsel and (2) erred by failing to state findings of fact and conclusions of law.

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 that Jackson's appeal is without merit. In denying Jackson's Rule 40 Petition, the circuit court filed its 24-page Order that contained findings of fact and conclusions of law. Jackson's points on appeal fail to comply with Hawai'i Rules of Appellate Procedure (HRPP) Rule 28(b)(4)(C) by quoting "the finding or conclusion urged as error," and therefore "will be disregarded." Although this court may "at its option" notice plain error in these circumstances (HRAP 28(b)(4)), based on our review of the record we have not identified any plain error in the Order.

Therefore,

The "Order Denying Petition to Vacate and Set Aside Judgment Under Rule 40 of the Hawaii Rules of Penal Procedure,

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

Filed on February 10, 2005" filed August 26, 2005 in the Circuit Court of the First Circuit is affirmed.

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

On the briefs:

John R. Remis, Jr.
for Petitioner-Appellant.

Daniel H. Shimizu,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Respondent-Appellee.



Chief Judge



Associate Judge



Associate Judge