

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 27651

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

GREGORY BARNETT, Petitioner-Appellant, v
STATE OF HAWAII, Respondent-Appellee

KHAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2007 MAY 31 AM 10:17

FILED

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(S.P.P. NO. 05-1-0015(3) (Cr. Nos. 92-0196(3) & 92-0259(3)))

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, Nakamura and Fujise, JJ.)

Petitioner-Appellant Gregory Barnett (Barnett) appeals from the Order Denying, Without Evidentiary Hearing, Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody (Order) filed on November 10, 2005 in the Circuit Court of the Second Circuit^{1/} (circuit court). Barnett filed his Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody (Rule 40 Petition) on July 6, 2005, pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 40.

In the two underlying criminal cases, Cr. Nos. 92-0196(3) and 92-0259(3), Barnett entered guilty pleas to, inter alia, ten class A felonies. The circuit court sentenced Barnett on November 30, 1994 as a multiple offender to extended terms of life imprisonment with the possibility of parole for the ten class A felonies, and the court filed its Amended Judgment on December 16, 1994.

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

On March 10, 1995, Barnett appeared at a hearing before the Hawaii Paroling Authority (HPA) to have his minimum terms of imprisonment set. The HPA set his minimum terms at twenty-five years on each of the ten class A felonies. The HPA filed its Amended Order on April 23, 1996.

On January 3, 1996, Barnett filed a petition for post-conviction relief under S.P.P. No. 96-0001. The circuit court denied the petition without a hearing, and the Hawai'i Supreme Court affirmed the denial on June 23, 1999. On December 30, 1997, Barnett filed another petition for post-conviction relief under S.P.P. No. 97-0015. The circuit court denied the petition without a hearing, and Barnett appealed. This court affirmed the denial on December 7, 1999, and on December 3, 2003, the Hawai'i Supreme Court affirmed the decision of this court.

On July 6, 2005, Barnett filed his Rule 40 Petition, in which he alleged that his twenty-five year minimum terms of imprisonment set by the HPA violated his equal protection rights under the United States and Hawai'i Constitutions because his minimum terms were higher than those set for other inmates who had been convicted of similar crimes.

On November 10, 2005, the circuit court issued its Order denying the Rule 40 Petition. The circuit court ruled that Barnett's claims in his petition had been waived and showed no colorable claim, were patently frivolous, and were without a

trace of support in the record or from other evidence submitted by Barnett. Barnett timely appealed.

On appeal, Barnett contends:

(1) Although he had raised the equal protection issue in his prior Rule 40 petitions, "the various judges always ruled that they did not have authority to rule on HPA issues."

(2) The circuit court erred when it found he had not provided evidence that his "HPA minimum term for Class A sex charges are 100% greater than the average sex charge minimum term."

(3) The circuit court erred "by not analyzing the HPA minimum terms in relation to the offenses" of other sex offenders with class A charges.

(4) Because other sex offenders with class A charges had received about half of the minimum term he received, there was no uniformity and he did not receive equal protection.

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 the circuit court properly denied Barnett's Rule 40 Petition as Barnett's claims were "previously ruled upon or were waived." HRPP Rule 40(a)(3). Furthermore, Barnett'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).

Therefore,

The Order Denying, Without Evidentiary Hearing,
Petition to Vacate, Set Aside, or Correct Judgment or to Release
Petitioner from Custody filed on November 10, 2005 in the Circuit
Court of the Second Circuit is affirmed.

DATED: Honolulu, Hawai'i, May 31, 2007.

On the briefs:

Gregory Barnett,
Petitioner-Appellant pro se.

Lisa M. Itomura and
Diane K. Taira,
Deputy Attorneys General
for Respondent-Appellee.


Presiding Judge


Associate Judge


Associate Judge