

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 28564

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

JOVIE M. ADORA, Petitioner-Appellant,
v.
STATE OF HAWAII, Respondent-Appellee

C.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P.P. NO. 06-1-0060 (Cr. Nos. 01-1-2324,
01-1-2446, 02-1-0545, and 02-1-0810))

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Jovie M. Adora (Adora) appeals from the Findings of Fact, Conclusions of Law, and Order Denying Petition for Post-Conviction Relief Without a Hearing filed on April 27, 2007 in the Circuit Court of the First Circuit (circuit court).¹ Adora filed his Petition for Post-Conviction Relief (Rule 40 Petition) on November 28, 2006 pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 40.

In the underlying criminal cases, Adora entered guilty pleas on March 3, 2003 to the stated offenses and received the sentences indicated:

Cr. No. 01-1-2324 -- Sexual Assault in the Third Degree, in violation of Hawaii Revised Statutes (HRS) § 707-732(1)(b) (Supp. 2004) -- five years of imprisonment.

Cr. No. 01-1-2446 -- Sexual Assault in the First Degree, in violation of HRS § 707-730(1)(a) (Supp. 2004) -- twenty years of imprisonment.

Cr. No. 02-1-0545 -- Sexual Assault in the Second Degree, in violation of HRS § 707-731 (Supp. 2001) -- ten years of imprisonment.

Cr. No. 02-1-0810 -- Sexual Assault in the First Degree, in violation of HRS § 707-730(1)(a), and Kidnapping, in violation of HRS § 707-720(1)(d) (1993) -- twenty and ten years of imprisonment, respectively.

Adora appealed the four judgments in a consolidated appeal.² On October 28, 2005, this court affirmed the four judgments. The Hawai'i Supreme Court subsequently denied certiorari.

In his Rule 40 Petition, Adora alleged:

(1) His due process rights under the Fifth Amendment to the United States Constitution and Article I, § 5 of the Hawai'i Constitution were denied when the State did not fulfill its promise that the longest sentence Adora would receive was ten years of imprisonment and the circuit court sentenced him to concurrent terms of imprisonment, the longest of which was twenty years.

(2) He was deprived of his right to effective assistance of counsel under the Sixth Amendment to the United States Constitution and Article I, § 14 of the Hawai'i Constitution because his attorney failed to object to the sentences imposed on him by the circuit court on October 29, 2003.

(3) "The State government has not fulfilled its side of the bargain. As follows: I) 10 yrs out of 10 yrs, II) Det. Mike Cho did not vouch for me at H.P.A. hearing, III) No S.O.T.P. Program, IV) Early parole."

On April 27, 2007, the circuit court denied the Rule 40 Petition.

² In his direct appeal, Adora contended that the circuit court (1) abused its discretion in denying his Motions to Withdraw Guilty Plea because his pleas resulted from undue parental interference and thus were not voluntary; (2) abused its discretion in denying his Motions to Reconsider Findings of Fact, Conclusions of Law and Order Denying Motion to Withdraw Guilty Plea because Adora's account of police threats had some corroboration in the record, was plausible, and formed legitimate grounds for the withdrawals; and (3) plainly erred in failing to ascertain Adora's acquiescence that there were factual bases for his guilty pleas.

On appeal, Adora appears to contend that (1) his trial counsel was ineffective³ because trial counsel failed to object when the circuit court failed to abide by Adora's plea agreement and sentenced him to twenty years of imprisonment, instead of the ten years to which he had agreed, and (2) the State failed to fulfill its promise that the longest term of imprisonment he would receive would be ten years.

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 Adora's appeal is without merit.

Adora's claim that he only agreed to a ten-year sentence as part of his plea agreement is without merit. The copies of the plea offer, which were made part of the plea agreements in all four cases, clearly state that he agreed to a twenty-year sentence for Sexual Assault in the First Degree, in Cr. No. 01-1-2446 and Sexual Assault in the First Degree, in Cr. No. 02-1-0810. The circuit court sentenced Adora to twenty years of imprisonment in each of Cr. Nos. 01-1-2446 and 02-1-0810 in accordance with the plea agreements.

This court also notes that in his Rule 40 Petition, Adora raised the grounds that "the State government has not fulfilled its side of the bargain. As follows: . . . II) Det. Mike Cho did not vouch for me at H.P.A. hearing, III) No S.O.T.P. Program, IV) Early parole." Adora did not raise these issues on appeal; therefore, these issues are waived. Hawai'i Rules of Appellate Procedure Rule 28(b)(7).

Therefore,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law, and Order Denying Petition for Post-

³ In the future, "if a brief raises ineffective assistance of counsel as a point of error, the appellant shall serve a copy of the brief on the attorney alleged to have been ineffective." Hawai'i Rules of Appellate Procedure Rule 28(a).

Conviction Relief Without a Hearing filed on April 27, 2007 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, October 30, 2008.

On the briefs:

Jovie M. Adora,
Petitioner-Appellant pro se.

Donn Fudo,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Respondent-Appellee.

Mam McDermid

Chief Judge

Corinne K. Watanabe

Associate Judge

Daniel R. Foley
Associate Judge