

NO. 29278

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

JOHN P. DUNBAR, Petitioner-Appellant, v.
STATE OF HAWAII, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(S.P.P. No. 07-1-0012(2))

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding J., Foley, and Leonard, JJ.)

In this consolidated appeal, Petitioner-Appellant John P. Dunbar (Dunbar) appeals from the (1) June 23, 2008 "Findings of Fact, Conclusions of Law, and Judgment Denying [Dunbar's December 6, 2007 Amended Hawai'i Rules of Penal Procedure (HRPP)] Rule 40 [(2006)] Petition for Post-Conviction Relief" (order denying second Rule 40 petition)¹ entered by the Circuit Court of the Second Circuit² (circuit court) in S.P.P. No. 07-1-0012; (2) December 11, 2008 "Findings of Fact, Conclusion of Law and Judgment Granting State's Motion to Dismiss [Dunbar's HRPP Rule 40] Petition for Post-Conviction Relief Filed on July 23, 2008" (order dismissing third Rule 40 petition) entered by the circuit court in S.P.P. No. 08-1-0013; and (3) February 2, 2009 "Order Denying [Dunbar's] Motion for Reconsideration of [the order dismissing third Rule 40 petition]" (order denying reconsideration) entered by the circuit court in S.P.P. No. 08-1-0013.

In accordance with Hawai'i Rules of Appellate Procedure Rule 35 (2008), and after carefully reviewing the record and the arguments made by the parties, as well as the statutory and case

¹ Dunbar filed his first HRPP Rule 40 Motion to Vacate, Set Aside, or Correct Judgment and Sentence on September 20, 2006.

² The Honorable Shackley F. Raffetto presided over all proceedings and entered all orders that are at issue in these consolidated appeals.

law relevant to the issues on appeal, we agree with the circuit court that the issues raised by Dunbar in his second and third Rule 40 petitions were either (1) raised and previously ruled upon in his direct appeal³ from the judgment of conviction and sentence entered on June 29, 2005; (2) waived by his failure to raise the issues in his direct appeal; or (3) patently frivolous and without a trace of support either in the record or from other evidence submitted by Dunbar.

Therefore, we hereby affirm the (1) the order denying second rule 40 petition, (2) order dismissing third rule 40 petition, and (3) order denying reconsideration.

DATED: Honolulu, Hawai'i, December 24, 2009.

On the briefs:

John P. Dunbar,
Petitioner-Appellant, pro se,
on the opening brief.

Ira Dennis Hawver
for Petitioner-Appellant
on the reply brief.

Richard K. Minatoya,
Deputy Prosecuting Attorney,
County of Maui,
for Respondent-Appellee.

³ The record indicates that this court issued a summary disposition order on September 21, 2006, affirming the judgment entered by the circuit court, the Honorable Joel E. August presiding, on June 29, 2005, convicting and sentencing Dunbar for attempted escape in the second degree in violation of Hawaii Revised Statutes §§ 710-1021(1), 705-500, and 701-109(4)(b) (1993). Three of the grounds raised by Dunbar in his second and third HRPP Rule 40 petitions were raised by Dunbar in his direct appeal from the judgment and ruled upon.