

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 29288

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

JAMES T. SHIPMAN, 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. 08-1-0011)
(Cr. No. 97-2556)

SUMMARY DISPOSITION ORDER

(By: Nakamura, C.J., Watanabe, and Leonard, JJ.)

Petitioner-Appellant James T. Shipman (Shipman) appeals from the Findings of Fact, Conclusions of Law, and Order Denying Petition for Post-Conviction Relief (Order) filed on June 23, 2008 in the Circuit Court of the First Circuit (circuit court).¹ Shipman filed his petition for post-conviction relief pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 40 (2006), alleging that his parole was improperly revoked and seeking vacatur of his parole revocation.

On appeal, Shipman argues the following:

The [circuit court] erred in failing to address the Americans With Disability Act (ADA).

The [circuit court] erred in finding [Shipman's] [g]rounds to be frivolous.

The [circuit court's] dismissal of the case was improper.

The crux of [Shipman's] Petition was that he was denied due process due to failure by the State of Hawaii to implement compliance with Title II of the ADA, 42 U.S.C. § 12131 et seq., and its implementing regulations.

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 resolve Shipman's points of error as follows:

Shipman stated in his opening brief that he was no longer in custody, and it appears that he completed his sentence

¹ The Honorable Randal K. O. Lee presided.

on August 7, 2008. Since Shipman completed his sentence, there is no possibility that his parole could be revoked again. Therefore, his appeal with respect to his parole revocation is moot. No exception to the mootness doctrine exists because it does not appear that this case involves a legal issue that is capable of repetition, yet evading review.

Shipman complains that the circuit court failed to address his ADA claim in the Order. In his petition, Shipman stated that violations of the ADA caused loss of his liberty. This is arguably a civil-rights claim that should have been transferred by the circuit court for disposition under the civil rules pursuant to HRPP Rule 40(c)(3). However, in his petition, the remedy Shipman sought was to reverse his parole revocation and confinement. He also sought a return to drug treatment. Shipman did not seek damages or other relief under the Civil Rights Act. Shipman admits that he is no longer in custody and has fulfilled his sentence. Thus, Shipman's release from custody and parole revocation cannot be undone. Shipman also cannot be returned to drug treatment because he is no longer in the custody of the Hawai'i Paroling Authority. Any error by the circuit court's failure to address or transfer Shipman's ADA claim is harmless.

THEREFORE,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law, and Order Denying Petition for Post-Conviction Relief filed on June 23, 2008 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, October 7, 2009.

On the briefs:

James T. Shipman,
Petitioner-Appellant, pro se.

Lisa M. Itomura and
Diane K. Taira,
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