

*** NOT FOR PUBLICATION ***

NO. 24082

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

LAEL E. SAMONTE, Petitioner-Appellant

vs.

STATE OF HAWAI'I, Respondent-Appellee

K. HAKAHAKA
CLERK OF APPELLATE COURTS
STATE OF HAWAII

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FILED

APPEAL FROM THE FIRST CIRCUIT COURT
(S.P.P. NO. 99-0031)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Nakayama, and Acoba, JJ.,
Circuit Judge Nakamura, in place of Levinson, J., recused
and Circuit Judge Sakamoto, assigned by reason of vacancy)

Petitioner-appellant Lael E. Samonte (Samonte) appeals from the January 26, 2001 order of the circuit court of the first circuit, the Honorable Michael D. Wilson presiding, denying Samonte's Hawai'i Rules of Penal Procedure (HRPP) Rule 40 petition for post-conviction relief (the Rule 40 petition).

On appeal, Samonte alleges that the circuit court erred in denying his Rule 40 petition because (1) he received ineffective assistance of counsel at trial, (2) the prosecutor committed misconduct during closing arguments, and (3) Samonte's appellate counsel was constitutionally ineffective for failing to raise either error on Samonte's direct appeal from his convictions.

Upon carefully reviewing the record and the briefs submitted by the parties, and having given due consideration to the arguments advanced and the issues raised, we hold that the circuit court did not err in denying Samonte's Rule 40 petition

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because (1) Samonte effectively waived his "ineffective assistance of trial counsel" and "prosecutorial misconduct" claims, see HRPP Rule 40(a)(3) (2001); and (2) Samonte's allegations that appellate counsel was ineffective stated no "colorable claims," see Dan v. State, 76 Hawai'i 423, 427, 879 P.2d 528, 532 (1994); Briones v. State, 74 Haw. 442, 465-467 & n.14, 848 P.2d 966, 977-978 & n.14 (1993); Domingo v. State, 76 Hawai'i 237, 242, 873 P.2d 775, 780 (1994), such that denial of those issues without an evidentiary hearing was proper, see HRPP Rule 40(f) (2005). Therefore,

IT IS HEREBY ORDERED that the order from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, June 9, 2005.

On the briefs:

James C. Beaman,
for the petitioner-
appellant Lael E.
Samonte

Joseph Gomes, counsel of
record for petitioner-
appellant Lael E. Samonte

Loren J. Thomas,
Deputy Prosecuting Attorney,
for respondent-appellee
State of Hawai'i

