
NO. 26403

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

PAUL KAY CORONEL, Petitioner-Appellant

vs.

STATE OF HAWAI'I, Respondent-Appellee
(NO. 26398; CIV. NO. 03-1-1088)

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PAUL KAY CORONEL, Petitioner-Appellant

vs.

STATE OF HAWAI'I, Respondent-Appellee
(NO. 26403; S.P.P. NO. 03-1-0006K)

APPEAL FROM THE FIRST AND THIRD CIRCUIT COURTS

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy JJ.)

Plaintiff-appellant Paul Kay Coronel, aka Paul Dennis Coronel, appeals pro se from: (1) the Circuit Court of the Third Circuit's February 2, 2004 final order¹ denying his petition under Hawai'i Rules of Penal Procedure (HRPP) Rule 40 for relief from his judgment of conviction for multiple counts of theft in the first degree; and (2) the Circuit Court of the First Circuit's August 29, 2003 interlocutory order² transferring venue to the third circuit and reclassifying his petition for declaratory judgment as a HRPP Rule 40 petition for post-

¹ The Honorable Ronald Ibarra entered the February 2, 2004 order.

² The Honorable Sabrina S. McKenna entered the August 29, 2003 order.

conviction relief.³ As points of error on appeal, Coronel contends that: (1) Hawai'i Revised Statutes (HRS) § 708-835 (1985) violates the Hawai'i and United States Constitutions by allowing defendants to be convicted of crimes for which they were not indicted; (2) Coronel himself was denied due process and grand jury rights because he was convicted, with the aid of HRS § 708-835, of a theft offense different from that for which he was indicted; and (3) the first circuit court erred in transferring his petition to the third circuit and compelling him to use HRPP Rule 40 to test the constitutionality of HRS § 708-835.

Upon carefully reviewing the record and the briefs submitted by the parties, and having given due consideration to the arguments advocated and the issues raised, we hold as follows:

- (1) The first circuit court did not err in transferring Coronel's petition because it did not have jurisdiction to entertain it as a petition for declaratory judgment, and only the third circuit court had jurisdiction to hear it as a non-conforming HRPP Rule 40 petition for

³ As an interlocutory order, the August 29, 2003 order was not independently appealable, but became so upon entry of the February 2, 2004 final order. See State v. Adam, 97 Hawai'i 475, 482, 40 P.3d 877, 884 (2002) (an appeal from a final order or judgment brings up for review all preceding interlocutory orders in the case). Coronel filed separate appeals from each of the first circuit's interlocutory order and the third circuit's final order, which were docketed in this court as Nos. 26398 and 26403, respectively. The appeals were consolidated by order of this court under No. 26403.

post-conviction relief. First, neither court had jurisdiction under the declaratory judgment statute, HRS § 632-1 (1993), because Coronel had an adequate remedy at law -- the defense of his own criminal prosecution -- for challenging the constitutionality of HRS § 708-835. See Pacific Meat Co. v. Otagaki, 47 Haw. 652, 655-56, 394 P.2d 618, 620-21 (1964) (declaratory relief is not available to enjoin the enforcement of a criminal statute where its constitutionality may be tested by defense of a criminal prosecution). Second, only the third circuit court, and not the first circuit court, had jurisdiction under the criminal jurisdiction statute, HRS § 603-21.5 (1993), because Coronel's offenses were committed within the third circuit and his case was not transferred from a court of that circuit to the first circuit for trial. See HRS § 603-21.5(1) (circuit courts shall have jurisdiction over offenses "committed within their respective circuits or transferred to them for trial by change of venue from some other circuit court");

(2) Coronel's petition was properly treated as a non-conforming HRPP Rule 40 petition because it constituted a post-conviction attack on his conviction based on a

constitutional challenge to the sufficiency of his indictment. See HRPP Rule 40(a)(1)(i) (post-conviction proceedings under Rule 40 encompass challenges to a judgment of conviction on the grounds that the judgment was obtained in violation of the federal or state constitution); HRPP Rule 40(c)(2) (the court may, upon written order, require that non-conforming post-conviction petitions claiming illegality of judgment be conformed to the requirements of Rule 40 with the filing of a supplemental petition);

(3) Coronel's argument regarding the constitutionality of HRS § 708-835 is precluded, and thus his petition properly denied, because he has previously challenged the constitutional sufficiency of his indictment on direct appeal and in other post-conviction proceedings.⁴ See HRPP Rule 40(a)(3) (Rule 40 relief not available where the issues sought to be raised have been waived or previously ruled upon). Therefore,

IT IS HEREBY ORDERED that: (1) the third circuit court's February 2, 2004 final order denying Coronel's petition

⁴ Coronel's conviction was affirmed on direct appeal by memorandum opinion of this court on June 18, 1990. State v. Coronel, No. 13919, 71 Haw. 657, 794 P.2d 618 (1990). His HRPP Rule 40 petition for post-conviction relief was denied by summary disposition order of this court on September 30, 1999. State v. Coronel, No. 21389, 92 Hawai'i 632, 994 P.2d 564 (1999). Coronel raised challenges to the constitutionality of his indictment (including, inter alia, that the indictment was impermissibly amended) that were ruled upon in both of those proceedings.

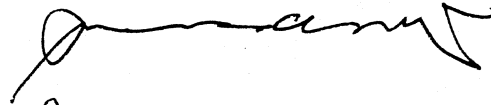
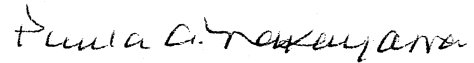
for post-conviction relief; and (2) the first circuit court's August 29, 2003 interlocutory order transferring and reclassifying Coronel's petition are affirmed.

DATED: Honolulu, Hawai'i, August 30, 2005.

On the briefs:

Paul Kay Coronel,
petitioner-appellant,
pro se

Dale Y. Ross,
Deputy Prosecuting Attorney,
for respondent-appellee
State of Hawai'i



James E. Duggan Jr.