

NO. 27438

IN THE SUPREME COURT OF THE STATE OF HAWAII

MI JA PAEK, Petitioner-Appellant,

vs.

STATE OF HAWAII, Respondent-Appellee

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C.M. RINANDO
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STATE OF HAWAII

APPEAL FROM THE FIRST CIRCUIT COURT
(S.P.P. No. 05-1-0037)

ORDER VACATING THE JULY 11, 2005 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DISMISSING PETITION FOR POST-CONVICTION RELIEF, AND REMANDING THIS CASE TO THE CIRCUIT COURT WITH INSTRUCTIONS (By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon review of the parties' briefs and the record, it appears that Respondent-Appellee State of Hawaii's (Appellee State) confession of error is supported by the record and well-founded in law. State v. Hoang, 93 Hawaii 333, 336, 3 P.3d 499, 502 (2000). The Circuit Court of the First Circuit, State of Hawaii, the Honorable Karl K. Sakamoto presiding, erred by denying Petitioner-Appellant Mi Ja Paek's (Appellant Paek) May 10, 2005 petition for post-conviction relief pursuant to Rule 40 of the Hawaii Rules of Penal Procedure (HRPP) without holding a hearing on the petition. Appellant Paek was entitled to a hearing because, based on the requirements of HRS § 802E-2 (1993), HRPP Rule 11(c)(5), and our holding in State v. Sorino, 108 Hawaii 162, 118 P.3d 645 (2005), Appellant Paek "allege[d] facts that if proven would entitle the petitioner to relief[.]" HRPP Rule 40(f). Therefore,

IT IS HEREBY ORDERED that the July 11, 2005 findings of fact, conclusions of law, and order dismissing Appellant Paek's petition for post-conviction relief pursuant to HRPP Rule 40 is

vacated, and this case is remanded the Circuit Court of the First Circuit, State of Hawai'i, with instructions to hold a hearing on Appellant Paek's May 10, 2005 petition for post-conviction relief in light of the holding in State v. Sorino, 108 Hawai'i 162, 118 P.3d 645 (2005).

DATED: Honolulu, Hawai'i, April 28, 2006.



Stuart Levinson

Fumua C. T. Nakayama



Pamela E. Duggan