

NO. 26973

IN THE SUPREME COURT OF THE STATE OF HAWAII

VERNON SILK, Petitioner-Appellant-Petitioner

vs.

STATE OF HAWAII, Respondent-Appellee-Respondent

NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2007 MAY 31 AM 9:04

FILED

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS  
(S.P.P. No. 03-1-0049)ORDER DISMISSING CERTIORARI PROCEEDING

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

On March 29, 2007, the petitioner-appellant-petitioner Vernon Silk filed an application for a writ of certiorari urging us to review the summary disposition order of the Intermediate Court of Appeals (ICA) in Silk v. State, No. 26973 (Sept. 21, 2006). On May 2, 2007, we accepted Silk's application. On May 11, 2007, the respondent-appellee-respondent State of Hawai'i [hereinafter, "the prosecution"] submitted an uncontested motion to supplement the record on appeal.

Upon carefully reviewing the record on appeal and the prosecution's motion and its attached "Exhibit A," it appears that:

(1) On May 12 and 18, 2005, after the Hawai'i Paroling Authority (HPA) handed down its June 9, 2003 order, which is the basis for Silk's Hawai'i Rules of Penal Procedure (HRPP) Rule 40 petition and the subject of the present application, the HPA entered and delivered to Silk, but not the parties' counsel, a corrected order that, at least colorably, addresses Silk's objections.

(2) In general, "no new evidence shall be introduced in the supreme court." Hawai'i Revised Statutes § 641-2 (Supp. 2004). Nevertheless, Exhibit A is admissible, even on appeal, as evidence of an adjudicative fact of which we may take notice, to wit, the HPA's subsequent proceedings. See Hawai'i Rules of Evidence Rules 201(b) and (f) & cmt., 1003, and 1005. Accordingly, we have considered Exhibit A and thereupon recognize that Silk's appeal to the ICA and his present application are moot.

(3) If Silk wishes to attack the HPA's May 12, 2005 corrected order, he should undertake (a) a request for reduction of minimum term of imprisonment pursuant to Hawai'i Administrative Rules § 23-700-26 and -27 (1992), if he is otherwise eligible, and/or (b) a new HRPP Rule 40 petition. Therefore,

IT IS HEREBY ORDERED that: (1) the prosecution's May 11, 2007 motion is granted; and (2) the certiorari proceeding is dismissed on the basis that the application was improvidently accepted.

DATED: Honolulu, Hawai'i, May 31, 2007.

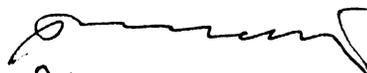
On the application:

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petitioner-appellant-petitioner  
Vernon Silk

  
*Stuart N. Fujioka*  
*Hanna A. Nishiyama*

On the motion:

Lisa M. Itomura and Bryan C. Yee,  
Deputy Attorneys General, for the  
respondent-appellee-respondent  
State of Hawai'i

  
*Lisa M. Itomura, Bryan C. Yee*