

NO. 29977

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

JORGE NORALES FERNANDEZ, Petitioner-Appellant, v.
STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT
(S.P.P. NO. 09-1-0003)

SUMMARY DISPOSITION ORDER

(By: Foley, Leonard and Reifurth, JJ.)

Petitioner-Appellant Jorge Norales Fernandez (Fernandez) appeals from the "Findings of Fact; Conclusions of Law; Amended Order Denying Petition for Post-Conviction Relief" (FOF/COL/Order) filed on June 25, 2009 in the Circuit Court of the Fifth Circuit (circuit court).¹

On June 1, 1992, Fernandez entered a no contest plea to Sexual Assault in the Third Degree, in violation of Hawaii Revised Statutes (HRS) § 707-732(1)(b) (1993). The circuit court sentenced Fernandez on December 17, 1992 to five years of probation and filed the Judgment, Guilty Conviction and Probation Sentence on December 18, 1992. Fernandez did not appeal his conviction.

On August 22, 2007, Fernandez filed a "Rule 40 Petition to Vacate Judgment of Conviction, and Demand for Hearing" (Petition) pursuant to Hawaii Rules of Penal Procedure (HRPP)

¹ The Honorable Randal G.B. Valenciano presided.

Rule 40. In his Petition, Fernandez alleged that (1) his no contest plea was "unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea" and (2) he received ineffective assistance of trial counsel.

On June 25, 2009, the circuit court issued its FOF/COL/Order, in which the circuit court found that Fernandez had not shown that a manifest injustice would result if his conviction for Sexual Assault in the Third Degree was not vacated.

On appeal, Fernandez asserts the same claims as those in his Petition.

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, as well as the relevant statutory and case law, we conclude that Fernandez's appeal is without merit.

Therefore,

The "Findings of Fact; Conclusions of Law; Amended Order Denying Petition for Post-Conviction Relief" filed on June 25, 2009 in the Circuit Court of the Fifth Circuit is affirmed.

DATED: Honolulu, Hawai'i, November 16, 2010.

On the briefs:

A. Edward Fyffe, Jr.
for Petitioner-Appellant.

Presiding Judge

Tracy Murakami,
Deputy Prosecuting Attorney,
County of Kauai,
for Respondent-Appellee.

Associate Judge

Associate Judge