

NO. CAAP-11-0000156

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

RICHARD ALLAN BATTEY, Petitioner-Appellant,
v.
STATE OF HAWAI'I, Respondent-Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(SPP NO. 10-1-0063 (CR NO. 00-1-1880))

SUMMARY DISPOSITION ORDER

(By: Nakamura, C.J., and Foley and Reifurth, JJ.)

Petitioner-Appellant Richard Allan Battey (Battey) appeals pro se from the "Findings of Fact; Conclusions of Law; and Order Denying Petition for Post-Conviction Relief" (Order Denying Petition), which was filed on March 3, 2011, in the Circuit Court of the First Circuit (Circuit Court).¹ We affirm.

On August 27, 2010, Battey filed the instant Petition for Post-Conviction Relief (Petition) pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 40 (2006). In its Order Denying Petition, the Circuit Court determined that Battey's "claims are patently frivolous and without a trace of support either in the record or from other evidence submitted by [Battey]," and it denied Battey's Petition without a hearing.

¹ The Honorable Edwin C. Nacino presided.

On appeal, Battey contends that the Circuit Court erred in denying his Petition as frivolous because there were material disputed facts that would support a ruling in his favor. However, in support of his contention, Battey offers only conclusory assertions that the Circuit Court erred, and he fails to provide this court with any basis for overturning the Circuit Court's decision.

In addition, it appears that Battey's instant Petition is challenging the Hawai'i Paroling Authority's revocation of his parole in 2007, which he previously challenged in a HRPP Rule 40 Petition filed on August 31, 2007 (Prior Petition). The Circuit Court denied the Prior Petition by order dated November 29, 2007,² and Battey did not appeal that decision. Battey was not entitled to raise issues concerning the Hawai'i Paroling Authority's revocation of his parole in 2007 in the instant Petition because those issues were previously ruled upon or were waived. See HRPP Rule 40(a)(3).

Based on the foregoing, we affirm the Order Denying Petition filed by the Circuit Court on March 3, 2011.

DATED: Honolulu, Hawai'i, November 30, 2011.

On the briefs:

Richard Allan Battey
Petitioner-Appellant Pro Se

Chief Judge

Lisa M. Itomura
Deputy Attorney General
for Respondent-Appellee

Associate Judge

Associate Judge

² The Honorable Michael A. Town issued the order denying the Prior Petition.