NOS. CAAP-14-0001108 and CAAP-14-0001109

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

NO. CAAP-14-0001108

MICKEY A. MADDOX, Petitioner-Appellant, v.
STATE OF HAWAIʻI, Respondent-Appellee

and

NO. CAAP-14-0001109

MICKEY A. MADDOX, Petitioner-Appellant, v.
STATE OF HAWAIʻI, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(SPECIAL PROCEEDING PRISONER NO. 13-1-0004)
(CRIMINAL NOS. 07-1-0139 and 09-1-0284)

SUMMARY DISPOSITION ORDER
(By: Nakamura, C.J., Foley and Leonard, JJ.)

Petitioner-Appellant Mickey A. Maddox (**Maddox**) appeals pro se from the "Findings of Fact, Conclusions of Law, and Order and Judgment Denying Without Prejudice Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody, as Amended, Supplemented, and Corrected" entered on August 21, 2014 in the Circuit Court of the Second Circuit[1] (**circuit court**).

On appeal, Maddox raises the following issues:[2]

[1] The Honorable Joseph E. Cardoza presided.

[2] Maddox's opening brief included both "Questions on Appeal" and "Statement of Error," and the issues he raised in these sections are treated as points of error.

(1) it was error to not arraign Maddox until over four-and-a-half months after his indictment in Cr. No. 07-1-0139;

(2) Maddox was entitled to assistance of counsel on his appeal in Cr. No. 07-1-0139;

(3) the circuit court committed structural error in not providing Maddox with assistance of counsel on his appeal in Cr. No. 07-1-0139;

(4) Maddox's appeal was dismissed due to errors committed by the circuit court;

(5) the circuit court committed error by not filing documents submitted in support of Maddox's Hawaiʻi Rules of Penal Procedure (**HRPP**) Rule 40 "Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody" (**Rule 40 Petition**);

(6) the circuit court committed error by not filing submitted documents and motions in support of Maddox's petition until it had denied the petition;

(7) Maddox's attorney was ineffective;

(8) the circuit court wrongfully denied Maddox's HRPP Rule 40 Petition;

(9) the circuit court erred in not dismissing Cr. No. 09-1-0284;

(10) Maddox was corporally punished and prosecution continued after the illegal punishment;

(11) Maddox's corporal punishment violated Hawaiʻi law;

(12) Maddox was entitled to assistance of counsel until the termination of Cr. No. 07-1-0139;

(13) the circuit court erred in failing to provide notice to Maddox of the order dismissing Cr. No. 07-1-0139;

(14) the circuit court failed to correct Maddox's illegal sentence under HRPP Rules 35 and 40;

(15) Maddox was not arraigned until over four-and-a-half months after the indictment in violation of Hawaii Revised Statutes (**HRS**) § 803-9 and HRPP Rules 5, 7, and 10;

(16) Maddox's right to a speedy trial was violated in violation of the Sixth Amendment of the United States Constitution;

(17) the circuit court failed to enter an order terminating jurisdiction of the case in Cr. No. 07-1-0139;

(18) the circuit court failed to rule on Maddox's "Motion to Release and Discharge from Custody; Dismiss with Prejudice";

(19) the circuit court erred in expanding its jurisdiction over Maddox as he was held in custody for weeks following the dismissal of Cr. No. 07-1-0139 in violation of HRS § 602-11;

(20) Maddox was denied assistance of counsel after his "Motion for Assistance of Counsel on first and only appeal";

(21) Maddox's counsel was ineffective, committed illegal acts and lied to Maddox in violation of the Sixth Amendment of the United States Constitution and article I, section 14 of the Hawaiʻi Constitution;

(22) Maddox suferred illegal corporal punishment;

(23) Respondent-Appellee State of Hawaiʻi (**State**) performed knowing malicious prosecution;

(24) the State's bad actions were evidence of violations of Contempt of Court under HRS § 710-1077;

(25) Maddox's due process rights were violated on the basis that he was "never arrested, not timely arraigned, not provided due notice, equal protections, delayed execution of warrant(s), corporally punished, double jeopardy, denied counsel, jurisdiction, [and] arraigned in Family Court, etc.";

(26) the family court lacked jurisdiction to arraign Maddox in Cr. No. 09-1-0284;

(27) "[m]ultiple dates are now missing from the record, and have been removed in an effort to cover past wrongs";

(28) the circuit court erroneously found that Maddox had waived his claims to errors in Cr. No. 07-1-0139 based on his plea agreement in Cr. No. 09-1-0284;

(29) the circuit court has denied filing documents submitted by Maddox in violation of HRPP Rules 42(e) and 49(f); and

(30) Maddox was held in custody illegally prior to May 14-15, 2009.

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 Maddox's appeal is without merit.

HRPP Rule 40 Post-Conviction Relief

HRPP Rule 40 relief is not available to Maddox. HRPP Rule 40(a)(3) provides:

> (3) INAPPLICABILITY. Rule 40 proceedings shall not be available and relief thereunder shall not be granted where the issues sought to be raised have been previously ruled upon or were waived. Except for a claim of illegal sentence, an issue is waived if the petitioner knowingly and understandingly failed to raise it and it could have been raised before the trial, at the trial, on appeal, in a habeas corpus proceeding or any other proceeding actually conducted, or in a prior proceeding actually initiated under this rule, and the petitioner is unable to prove the existence of extraordinary circumstances to justify the petitioner's failure to raise the issue. There is a rebuttable presumption that a failure to appeal a ruling or to raise an issue is a knowing and understanding failure.

To grant HRPP Rule 40 relief, a "court must first determine whether a petitioner has rebutted the presumption of a knowing and intelligent failure to raise an issue. If the presumption is not rebutted, then the court determines whether the existence of extraordinary circumstances justifies the failure to have previously raised the claim." Fagaragan v. State, 132 Hawaiʻi 224, 237, 320 P.3d 889, 902 (2014).

In evaluating Maddox's HRPP Rule 40 Petition, the circuit court concluded that the issues Maddox raised had been previously raised and ruled upon in Cr. No. 09-1-0284. Maddox did not appeal from the Judgment of Conviction and Probation Sentence entered on August 30, 2010 in Cr. No. 09-1-0284. Upon a thorough review of the record, which includes the records in Cr. Nos. 07-1-0139 and 09-1-0284, we conclude that all the claims for relief raised by Maddox in his HRPP Rule 40 Petition have been previously ruled upon or have been waived. Accordingly, Maddox was not entitled to relief on these claims.

Therefore,

IT IS HEREBY ORDERED that the "Findings of Fact, Conclusions of Law, and Order and Judgment Denying Without Prejudice Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody, as Amended, Supplemented, and Corrected" entered on August 21, 2014 in the Circuit Court of the Second Circuit is affirmed.

DATED: Honolulu, Hawaiʻi, March 31, 2016.

On the briefs:

Mickey A. Maddox
Petitioner-Appellant pro se.

Chief Judge

Artemio C. Baxa
Deputy Prosecuting Attorney
County of Maui
for Respondent-Appellee.

Associate Judge

Associate Judge