

NO. 30635

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

MICHAEL C. TIERNEY, Petitioner-Appellant, v.
STATE OF HAWAII, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P.P. NO. 10-1-0018 (Cr. No. 08-1-0869))

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding J., Fujise and Ginoza, JJ.)

Petitioner-Appellant Michael C. Tierney (Tierney) appeals from the Order Dismissing Petition for Post-Conviction Relief filed on July 7, 2010 in the Circuit Court of the First Circuit¹ (circuit court).

On March 25, 2010, Tierney filed a Petition for Writ of Habeas Corpus (Petition). On March 30, 2010, the circuit court filed an Order Designating Motion as Nonconforming Petition for Post-Conviction Relief and Directing Petitioner to File Supplemental Petition. In a letter dated March 30, 2010, Tierney was informed that the Petition was assigned S.P.P. No. 10-1-0018 and would be treated as a nonconforming Petition for Post-Conviction Relief pursuant to Hawaii Rules of Penal Procedure (HRPP) Rule 40(c)(2). Tierney was informed that the enclosed

¹ The Honorable Richard K. Perkins presided.

Form A -- Petition for Post-Conviction Relief -- should be filled out and submitted to the circuit court. Tierney was also provided a copy of Form B - Request to Proceed without Paying Filing Fees. The letter warned Tierney that "[f]ailure to submit the documents by May 31, 2010 may result in your petition being dismissed."

On July 7, 2010, the circuit court issued the Order Dismissing Petition for Post-Conviction Relief, which dismissed the Petition for failure to comply with the circuit court's March 30, 2010 Order Designating Motion as Nonconforming Petition for Post-Conviction Relief and Directing Petitioner to File Supplemental Petition.

On appeal, Tierney contends he was denied meaningful access to the courts to challenge violations of his constitutional rights and asks for a review of the Petition on the merits.

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 Tierney's appeal is without merit.

The Petition provided inadequate information to evaluate Tierney's claim that his parole was improperly denied. Therefore, the circuit court properly treated the Petition as nonconforming and ordered Tierney to complete Form A so that additional information could be obtained before the court ruled on the merits of the Petition. HRPP Rule 40(c)(2). The circuit court provided Tierney with a copy of Form A and warned Tierney that failure to comply could result in dismissal of the Petition. Tierney failed to comply with the circuit court's order to supplement the Petition. Therefore, under HRPP Rule 40(e), the circuit court was empowered to dismiss the Petition because Tierney failed to clarify the Petition after being provided the opportunity to do so. Tierney provided no valid reason for not

following the circuit court's Order Designating Motion as Nonconforming Petition for Post-Conviction Relief and Directing Petitioner to File Supplemental Petition.

Therefore,

IT IS HEREBY ORDERED that the Order Dismissing Petition for Post-Conviction Relief filed on July 7, 2010 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, June 21, 2011.

On the briefs:

Michael C. Tierney,
Petitioner-Appellant pro se.

Presiding Judge

Delanie D. Prescott-Tate,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Respondent-Appellee.

Associate Judge

Associate Judge