

NO. CAAP-14-0000817

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

NOLAN L.K. CRABBE, Petitioner-Appellant, v.
STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(SPECIAL PROCEEDINGS PRISONER NO. 10-1-0090)
(CRIMINAL NO. 00-1-0300)

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Nolan L.K. Crabbe (**Crabbe**) appeals from an April 10, 2014 "Findings of Fact, Conclusions of Law, and Order Denying Petition to Vacate, Set Aside, or Correct Judgment Pursuant to Rule 40 [Hawai'i Rules of Penal Procedure (**HRPP**)], " entered in the Circuit Court of the First Circuit¹ (**circuit court**).

On appeal, Crabbe contends the circuit court erred in denying his ineffectiveness of counsel claim and his other asserted grounds for relief - newly discovered evidence, use of evidence pursuant to an unlawful arrest, prosecutorial misconduct, and illegal sentence.

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 Crabbe's appeal is without merit.

¹

The Honorable Glenn J. Kim presided.

On November 17, 2010, Crabbe filed a "Petition to Vacate, Set Aside, or Correct Judgment" (**Petition**) pursuant to HRPP Rule 40. On September 16, 2011, the circuit court denied the Petition a hearing and then dismissed the Petition, finding "Crabbe's claims to be patently frivolous and without trace of support either in the record or from other evidence submitted" Crabbe appealed and on September 27, 2013, this court in a memorandum opinion entered in case no. CAAP-11-0001059, vacated the circuit court's order denying the Petition and remanded the case for a hearing.

On March 5, 2014, the circuit court held an evidentiary hearing on Crabbe's Petition. Testifying at the hearing were both Crabbe and his former counsel, who disputed Crabbe's claims and testimony.

Crabbe's ineffectiveness of counsel claims are based on his allegations that his attorney at the time of the change of plea and sentencing continually lied to and misled him regarding both the substance and the procedural requirements of his plea deal such that he was in effect fraudulently induced into accepting both the deal and the subsequent sentence.

The circuit court found the testimony of Crabbe's former counsel to be credible and found Crabbe's testimony not credible, and on April 10, 2014 issued the "Findings of Fact, Conclusions of Law, and Order Denying Petition to Vacate, Set Aside, or Correct Judgment Pursuant to Rule 40 HRPP" denying Crabbe's Petition once again. This court "will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the province of the trier of fact." State v. Mattiello, 90 Hawai'i 255, 259, 978 P.2d 693, 697 (1999) (citation, internal quotation mark and brackets omitted). There was substantial evidence to support the circuit court's findings, and thus the circuit court's findings were not clearly erroneous and its conclusions were not in error.

Crabbe's other points on appeal were waived by his no contest pleas, State v. Morin, 71 Haw. 159, 785 P.2d 1316 (1990), and his failure to argue them in this appeal. See Hawai'i Rules of Appellate Procedure 28(b)(7).

Therefore,

IT IS HEREBY ORDERED that the April 10, 2014 "Findings of Fact, Conclusions of Law, and Order Denying Petition to Vacate, Set Aside, or Correct Judgment," entered in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, June 25, 2015.

On the briefs:

Cynthia A. Kagiwada
for Petitioner-Appellant.

Presiding Judge

Sonja P. McCullen
Deputy Prosecuting Attorney
City and County of Honolulu
for Respondent-Appellee.

Associate Judge

Associate Judge