

**Electronically Filed
Intermediate Court of Appeals
CAAP-10-0000183
20-DEC-2011
07:59 AM**

NO. CAAP-10-0000183

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

WOLFGANG EISERMANN, Petitioner-Appellant, v.
STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(SPECIAL PROCEEDINGS PRISONER NO. 10-1-0045; CR. NO. 91-2964)

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Wolfgang Eisermann ("Eisermann") appeals from the Findings of Fact, Conclusions of Law and Order Denying Petition for Post-Conviction Relief, filed on October 11, 2010, in the Circuit Court of the First Circuit ("Circuit Court").^{1/}

On August 10, 2010, Eisermann filed a Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody ("Petition"), pursuant to Rule 40 of the Hawaii Rules of Penal Procedure ("HRPP"). The Petition was denied on October 11, 2010, and Eisermann timely filed this appeal.

On appeal, Eisermann contends that the district court judge who presided over his sentencing was not temporarily authorized to act as a circuit court judge.

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, we resolve Eisermann's point of error as follows:

^{1/} The Honorable Richard K. Perkins presided.

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER

Eisermann's point of error was previously raised and ruled upon by this court. *Eisermann v. State*, No. 24820, 2003 WL 1919503, *3 n.3 (Haw. Ct. App. April 22, 2003). Haw. R. App. P. 35(c)(1) (memorandum opinion or unpublished dispositional order may be cited under the circumstances of this case). Therefore, relief is not available pursuant to HRPP Rule 40. Haw. R. Pen. P. 40(a)(3).

Therefore,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Order Denying Petition for Post-Conviction Relief, filed on October 11, 2010, in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, December 20, 2011.

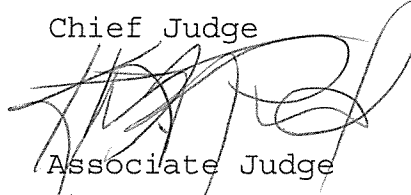
On the briefs:

Wolfgang Eisermann
Pro Se Petitioner-Appellant

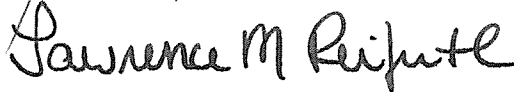
Loren J. Thomas,
Deputy Prosecuting Attorney,
City & County of Honolulu,
for Respondent-Appellee



Chief Judge



Associate Judge



Associate Judge