

**Electronically Filed
Intermediate Court of Appeals
CAAP-10-000033
03-MAY-2012
09:50 AM**

NO. CAAP-10-000033

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

GORDON P. BURGO, Petitioner-Appellant, v.
STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(S.P.P NO. 10-1-006K)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, Leonard and Reifurth, JJ.)

Petitioner-Appellant Gordon Paul Burgo ("Burgo") appeals from the September 3, 2010 Order Finding Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody, Filed May 17, 2010, Patently Frivolous and Dismissing Petition entered in the Circuit Court of the Third Circuit ("Circuit Court").^{1/}

On August 21, 2006, in FC-CR No. 04-1-385K, Burgo pleaded guilty to one count of Sexual Assault in the Second Degree and one count of Sexual Assault in the Third Degree. On October 16, 2006, the Circuit Court entered a judgment and sentence related to those counts.

Also on August 21, 2006, in CR No. 05-1-0043K, Burgo pleaded guilty to two counts of Sexual Assault in the Third Degree. On October 16, 2006, the Circuit Court entered a judgment and sentence related to those counts.

On May 17, 2010, Burgo filed a Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner For [sic] Custody ("Petition"), pursuant to Rule 40 of the Hawaii Rules of Penal Procedure. Burgo challenged his convictions in FC-CR No.

^{1/} The Honorable Elizabeth Strance presided.

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER

04-1-385K and CR No. 05-1-0043K stating the following grounds for relief:

- A. Ground one: Nishitani v. Baker
Supporting FACTS (tell your story briefly without citing cases or laws): State of Hawaii must prove beyond a reasonable doubt that the State of Hawaii is in fact a (legitimate government
- B. Ground two: Organic Constitution of 1787
Supporting FACTS (tell your story briefly without citing cases or laws): I stand upon [sic] my constitutional rights of the (organic) constitution of 1787, I am an American national citizen.
- C. Ground three: See CR No. 05-1-43K writ of Habeas Corpus
- D. Ground four: In re Apuna, 6 Haw 732, 1869 Haw. LEXIS 3 (1869)
Supporting FACTS (tell your story briefly without citing cases or laws): the writ of habeas corpus was designed to release persons from illegal confinement.

On September 3, 2010, the Circuit Court dismissed Burgo's Petition and he timely filed this appeal.

As best as can be discerned from Burgo's Opening Brief, on appeal, he asserts that the Circuit Court lacked jurisdiction to convict him in FC-CR No. 04-1-385K and CR No. 05-1-0043K because he is an American national citizen, he is a citizen of the nation of Hawai'i, and the State of Hawai'i is a corporation. However, Burgo also states that he is not a resident of the State of Hawai'i and not a citizen of the United States.

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 Burgo's points of error as follows:

Burgo failed to provide any support for the proposition that being an "American national citizen" deprived the Circuit Court of subject matter or personal jurisdiction in FC-CR No. 04-1-385K and CR No. 05-1-0043K. Persons claiming to be citizens of the Kingdom of Hawai'i are subject to the laws of the State of Hawai'i, including the statutes providing for the jurisdiction of the circuit courts. See generally *State v. Fergerstrom*, 106 Hawai'i 43, 55, 101 P.3d 652, 664 (App. 2004); *State v. Lorenzo*, 77 Hawai'i 219, 220, 883 P.2d 641, 642, (App. 1994); *State v.*

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

Jim, 80 Hawai'i 168, 172, 907 P.2d 754, 758 (1995). The State of Hawai'i is not a corporation. Haw. Const. art. I, § 1. Therefore,

IT IS HEREBY ORDERED that the Order Finding Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody, Filed May 17, 2010, Patently Frivolous and Dismissing Petition, filed on September 3, 2010 in the Circuit Court of the Third Circuit is affirmed.

DATED: Honolulu, Hawai'i, May 3, 2012.

On the briefs:

Gordon Paul Burgo,
Pro Se Petitioner-Appellant.

Linda L. Walton,
Deputy Prosecuting Attorney,
County of Hawai'i,
for Respondent-Appellee


Daniel R. Foley
Presiding Judge


Associate Judge


Lawrence M. Reipert
Associate Judge