

NO. CAAP-16-0000332

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

RHONDA`E QUIN`LEY, Petitioner-Appellant, v.
STATE OF HAWAII, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P.P. NO. 14-1-0014; CR. NO. 88-2289)

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Rhonda`e Quin`ley appeals from the Order Dismissing Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody, filed on February 29, 2016, in the Circuit Court of the First Circuit ("Circuit Court").¹

On November 6, 1995, after pleading guilty, Quin`ley was convicted of Assault in the First Degree, Kidnapping, and Sexual Assault in the Third Degree. On February 25, 2009, Quin`ley filed a Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody in accordance with Rule 40 of the Hawai'i Rules of Penal Procedure ("HRPP") which was docketed as SPP No. 09-1-0011 ("First Petition"). Quin`ley claimed, among other things, that his plea agreement was violated when his presentence credit was recalculated pursuant to *State v. Tauiliili*, 96 Hawai'i 195, 29 P.3d 914 (2001). On June 30, 2010, the Circuit Court issued its Amended Findings of Fact, Conclusions of Law, and Order Denying Petition for Post-

¹ The Honorable Richard K. Perkins presided.

Conviction Relief Without a Hearing, which denied the First Petition. Quin`ley did not appeal from the denial of his First Petition.

On September 30, 2010, Quin`ley filed a Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody in accordance with HRPP Rule 40 which was docketed as SPP No. 10-1-0073 ("Second Petition"). Quin`ley again claimed that his plea agreement was violated when his presentence credit was recalculated pursuant to *Tauiliili*. Quin`ley also contended that the plea agreement was unlawfully induced and made unknowingly, and that he had received ineffective assistance of counsel. On May 3, 2011, the Circuit Court issued its Findings of Fact, Conclusions of Law, and Order Denying Petition for Post-Conviction Relief Without a Hearing, which denied the Second Petition. Quin`ley did not appeal from the denial of his Second Petition.

On June 2, 2014, Quin`ley filed a Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody in accordance with HRPP Rule 40 which was docketed as S.P.P. No. 14-1-0014 ("Third Petition"). Quin`ley claimed that his guilty plea was obtained without real understanding of the consequences of the plea, i.e. the application of presentence credit should have been applied to each conviction, and that he was provided ineffective assistance of counsel when his counsel "misled" and "illadvised" him about the plea agreement regarding the application of presentence credit. On February 29, 2016 the Circuit Court issued its Order Dismissing Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody, which dismissed the Third Petition.

On appeal, Quin`ley contends that his presentence credit was improperly denied for each conviction because *Tauiliili* should not apply to him retroactively. 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 Quin`ley's point of error as follows and affirm.

Quin`ley raises the same issue on appeal as he did in the First and Second Petitions. We conclude that the claims raised by Quin`ley in his Third Petition for post-conviction relief have been previously ruled upon or have been waived. See Haw. R. Penal P. 40(a)(3) (stating that relief under Rule 40 "shall not be granted where the issues sought to be raised have been previously ruled upon or were waived").

Therefore, IT IS HEREBY ORDERED that the Order Dismissing Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody, filed on February 29, 2016, in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, May 19, 2017.

On the briefs:

Rhonda`e Quin`ley
Pro Se Petitioner-Appellant. Presiding Judge

Stephen K. Tsushima,
Deputy Prosecuting Attorney,
City & County of Honolulu,
for Respondent-Appellee. Associate Judge

Associate Judge