

NO. CAAP-17-0000736

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

MATTHEW CLEMENT, Petitioner-Appellant,
v.
STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P.P. NO. 16-1-0008)

ORDER

(By: Hiraoka, J., for the court¹)

Upon review of the (1) letter dated February 10, 2020 (JIMS record on appeal docket no. 96), (2) letter dated February 12, 2020 (JIMS record on appeal docket no. 96), (3) letter dated February 18, 2020 (JIMS record on appeal docket no. 96), (4) ex parte motion to allow late filing of motion for reconsideration and motion for reconsideration of summary disposition order (JIMS record on appeal docket no. 98), and (5) ex parte motion for appointment of counsel (JIMS record on appeal docket no. 100), and supporting documents, all filed by self-represented Petitioner-Appellant Matthew Clement (**Clement**) on February 21, 2020, and the record, it appears that:

1. Our summary disposition order was served upon Clement by mail on January 30, 2020, making any motion for reconsideration by Clement due on Tuesday, February 11, 2020, see Hawai'i Rules of Appellate Procedure (**HRAP**) Rules 26(c) and 40(a);

2. Clement tendered his motion for reconsideration to prison officials on February 10, 2020, but it was returned to him and not forwarded to the appellate clerk's office;

3. Clement retendered his motion for reconsideration to prison officials on February 13, 2020, but it was again returned to him and not forwarded to the appellate clerk's office;

4. Clement again tendered his motion for reconsideration to prison officials on February 18, 2020, and it was then forwarded to the appellate clerk's office and filed on February 21, 2020;

5. Under Hawai'i law, a self-represented prisoner's document is deemed filed on the day it is tendered to prison officials. See Fagaragan v. State, 132 Hawai'i 224, 236, 320 P.3d 889, 901 (2014) (citing Setala v. J.C. Penney Co., 97 Hawai'i 484, 40 P.3d 886 (2002));

6. We did not overlook or misapprehend any points of law or fact when we entered the January 30, 2020 Summary Disposition Order;

7. The underlying petition is one for post-conviction collateral remedy, pursuant to HRAP Rule 40;

8. The constitutional right to counsel does not extend to post-conviction challenges. Engstrom v. Naauao, 51 Haw. 318, 321, 459 P.2d 376, 378 (1969) (Engstrom); see also State v. Levi, 102 Hawai'i 282, 288, 75 P.3d 1173, 1179 (2003); and

9. Clement's intended petition for writ of certiorari does not raise "substantial issues which require marshalling of evidence and logical presentation of contentions" that might warrant discretionary appointment of counsel. See Engstrom, 51 Haw. at 321, 459 P.2d at 378 (citations omitted).

Therefore, IT IS HEREBY ORDERED that:

1. Clement's motion to allow late filing of motion for reconsideration is denied as unnecessary because Clement's motion for reconsideration was timely tendered to prison officials on February 10, 2020;

2. Clement's motion for reconsideration of our January 30, 2020 Summary Disposition Order is denied; and

3. Clement's motion for appointment of counsel is denied without prejudice to Clement's right to petition the circuit court for appointment of counsel on remand.

DATED: Honolulu, Hawai'i, February 28, 2020.

Associate Judge