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NO. CAAP-23-0000642

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

SAMUEL COOPER, JR., Petitioner-Appellant, v.
STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CASE NO. 1CPN-22-0000028)

SUMMARY DISPOSITION ORDER

(By: Leonard, Acting Chief Judge, Hiraoka and Wadsworth, JJ.)

Petitioner-Appellant Samuel Cooper, Jr. (**Cooper**), self-represented, appeals from the October 3, 2023 Order Denying Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody (**Order Denying Fifth Rule 40 Petition**).¹

Cooper does not identify points of error on appeal, as such. Nonetheless, we address Cooper's argument to the extent that we are able to discern it. On October 18, 2022, Cooper filed a Petition for Post-Conviction Relief pursuant to Hawai'i Rules of Penal Procedure (**HRPP**) Rule 40 (**Fifth Rule 40 Petition**) raising a single ground for relief: that the prosecutor used information charging in the underlying criminal case. Cooper seeks relief from the Circuit Court's denial of the Fifth Rule 40 Petition.

The underlying criminal case stemmed from a 1999 murder. On September 3, 1999, Cooper was charged by way of complaint with Murder in the Second Degree, in violation of Hawaii Revised Statutes § 707-701.5 (2014), convicted after a

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The Honorable Trish K. Morikawa presided.

jury trial, and sentenced to life imprisonment with the possibility of parole.

Cooper appears to argue, as he argued in various submissions to the Circuit Court, that he was entitled to a grand jury indictment based on State v. Obrero, 151 Hawai'i 472, 517 P.3d 755 (2022).

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, we resolve Cooper's appeal as follows:

The Hawai'i Supreme Court has held that "Obrero applies to cases that were pending trial before the decision. Obrero does not apply retroactively to defendants who pled out or to defendants convicted after a trial." State v. Bautista, 153 Hawai'i 284, 289, 535 P.3d 1029, 1034 (2023). The supreme court further held that defendants challenging a charging instrument's validity for the first time in an HRP Rule 40 petition are foreclosed from having their trial convictions overturned pursuant to Obrero. Id. Accordingly, we conclude that Cooper is not entitled to relief.

Therefore, the Circuit Court's October 3, 2023 Order Denying Fifth Rule 40 Petition is affirmed. In addition, Cooper's Motion for Immediate Decision and Relief, filed on November 27, 2024, is hereby denied.

DATED: Honolulu, Hawai'i, June 12, 2025.

On the briefs:	/s/ Katherine G. Leonard Acting Chief Judge
Samuel Cooper, Jr., Petitioner-Appellant, pro se.	/s/ Keith K. Hiraoka Associate Judge
Loren J. Thomas Deputy Prosecuting Attorney, for Respondent-Appellee.	/s/ Clyde J. Wadsworth Associate Judge