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NO. CAAP-24-0000507

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

CRANDALL L. PENAFLOR, Petitioner-Appellant, v.
STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CASE NO. 2CPN-24-0000004)

SUMMARY DISPOSITION ORDER

(By: Leonard, Presiding Judge, Hiraoka and McCullen, JJ.)
Petitioner-Appellant Crandall Penaflor (**Penaflor**)

appeals from the June 26, 2024 Findings of Fact [(**FOFs**)],
Conclusions of Law [(**COLs**)], and Order Denying Rule 40 Petition
(**Order Denying 2024 Petition**) entered by the Circuit Court of the
Second Circuit (**Circuit Court**).¹

On June 25, 1991, after a jury trial, Penaflor was
convicted of Burglary in the First Degree, in violation of Hawaii
Revised Statutes (**HRS**) § 708-810(1)(c) (1985); Terroristic
Threatening in the First Degree, in violation of HRS §
707-716(1)(d) (Supp. 1989); Kidnapping, in violation of HRS
§ 707-720(1)(d) (Supp. 1986); and Sexual Assault in the First
Degree, in violation of HRS § 707-730(1)(a) (Supp. 1987). The
Hawai'i Supreme Court upheld his conviction on appeal. State v.

¹ The Honorable Peter T. Cahill presided.

Penaflor, No. 15629, 1992 WL 213874 (Haw. Aug. 26, 1992) (mem. op.).

Penaflor has previously filed a number of post-conviction petitions and motions and, in some cases, appeals therefrom. Of particular relevance here, on January 22, 1998, Penaflor filed his first Hawai'i Rules of Penal Procedure (**HRPP**) Rule 40 Petition (**1998 Petition**) in which he argued, *inter alia*, that trial counsel provided ineffective assistance of counsel because counsel "failed to aggressively [sic] cross examine the prosecution witnesses, especially the alleged victims, even though he was aware that I passed a witness and evidence to prove that the alleged victims were lying on the stand." The 1998 Petition was denied without hearing, with the Circuit Court reasoning that Penaflor "failed to show any such specific errors or omissions resulted in the withdrawal or substantial impairment of a potentially meritorious defense."² Penaflor did not appeal from the denial of the 1998 Petition.

On September 11, 2006, Penaflor filed a second HRPP Rule 40 Petition (**2006 Petition**). Penaflor v. State, No. 28527, 2008 WL 2503259 at *1 (Haw. App. June 24, 2008) (SDO). The Circuit Court denied the 2006 Petition without a hearing on April 17, 2007. Id. Penaflor appealed, raising six points of error. Id. Relevant here, we held that ineffective assistance of trial counsel claims were raised and ruled on in the 1998 Petition, and Penaflor failed to show extraordinary circumstances to justify his failure to raise any additional ineffective assistance of counsel claims in the 1998 Petition, and therefore, the

² The Honorable Boyd P. Mossman presided.

additional ineffective assistance of counsel claims raised in the 2006 Petition were waived. Id. at *1-3.

In the Points of Error section of his Opening Brief, Penaflor contends that the Circuit Court clearly erred in FOF 7 and COLs 1-8. Penaflor's overarching argument is that in the 1998 Petition, he only raised a general confrontation clause argument that trial counsel failed to properly and aggressively cross examine the witnesses, especially the alleged victims, and therefore denied him effective assistance of counsel. In the 2024 Petition and in this appeal, Penaflor asserts more specifically that trial counsel failed to cross examine the complaining witness about her drug use on the day of the alleged assault, which Penaflor maintains was of consequence to her motives and credibility, thus depriving him of a potentially meritorious defense.

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 Penaflor's points of error as follows.

We review the Circuit Court's denial of an HRPP Rule 40 petition without a hearing for failure to state a colorable claim *de novo*. Dan v. State, 76 Hawai'i 423, 427, 879 P.2d 528, 532 (1994).

HRPP Rule 40(a)(3) states:

(3) INAPPLICABILITY. Rule 40 proceedings shall not be available and relief thereunder shall not be granted where the issues sought to be raised have been previously ruled upon or were waived. Except for a claim of illegal sentence, an issue is waived if the petitioner knowingly and understandingly failed to raise it and it could have been raised before the trial, at the trial, on appeal, in a habeas corpus proceeding or any other proceeding actually conducted, or in a prior proceeding actually initiated under

this rule, and the petitioner is unable to prove the existence of extraordinary circumstances to justify the petitioner's failure to raise the issue. There is a rebuttable presumption that a failure to appeal a ruling or to raise an issue is a knowing and understanding failure.

Here, Penaflor seeks relief for alleged ineffective assistance of counsel on essentially the same grounds as he raised in the 1998 Petition. Penaflor argues that he should nevertheless be granted relief because his ineffective assistance of counsel claim in the 1998 Petition was a "generic claim" for violation of the confrontation clause that was not properly articulated, whereas in the 2024 Petition, he more particularly argues that trial counsel should have confronted the complaining witness about her drug use on the day of the alleged assault.

We conclude that this argument is without merit. Penaflor's contention that trial counsel was ineffective because he did not properly cross examine the complaining witness was raised and ruled upon in the Circuit Court's disposition of the 1998 Petition. HRPP Rule 40(a)(3) expressly prohibits relief where an issue has been previously ruled upon. Penaflor's argument that the rule does not apply here because the first petition was generic, but now he is raising the issue more specifically, is without legal foundation.

Moreover, even if we were to construe it otherwise, pursuant to HRPP Rule 40(a)(3), this issue is waived. Penaflor has not demonstrated the existence of extraordinary circumstances to justify his failure to raise the issue in the prior petition. His only argument is that he did not appeal the ruling from the 1998 Petition because he had no legal experience or help. That is not an extraordinary circumstance justifying a second petition

for relief based on the claim that counsel was ineffective in cross examining the complaining witness, but with a more detailed identification of the same issue.

Accordingly, the Circuit Court's June 26, 2024 Order Denying Petition is affirmed.

DATED: Honolulu, Hawai'i, August 27, 2026.

Crandall Penaflor,
Petitioner-Appellant,
self-represented

/s/ Katherine G. Leonard
Presiding Judge

Renee Ishikawa Delizo,
Deputy Prosecuting Attorney,
County of Maui,
for Respondent-Appellee

/s/ Keith K. Hiraoka
Associate Judge

/s/ Sonja M.P. McCullen
Associate Judge