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NO. CAAP-25-0000566

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

In the Matter of
ROBERT RAYMOND TONGG, Petitioner-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CASE NO. 2SP081000080)

SUMMARY DISPOSITION ORDER

(By: Hiraoka, Presiding Judge, and McCullen, J.;
with Gluck, J. concurring)

Robert Raymond **Tongg** is a convicted sex offender. He petitioned the Circuit Court of the Second Circuit to terminate his requirement to register in the Sex Offender and Other Covered Offender Registry under Hawaii Revised Statutes (**HRS**) Chapter 846E. His petition was denied. Representing himself, he appeals from the *Final Judgment* entered on temporary remand on October 23, 2025.¹ We affirm.

On October 5, 1988, Tongg was convicted of six counts of Sexual Assault in the Second Degree (HRS § 707-731), one count of Sexual Assault in the Third Degree (HRS § 707-732), and one count of Kidnapping (HRS § 707-720). He was sentenced to six months in prison and five years probation.

HRS Chapter 846E took effect on July 1, 1997. 1997 Haw. Sess. Laws Act 316, § 9 at 755. It required that sex offenders register with the attorney general, and provided:

¹ The Honorable Kirstin M. Hamman presided.

"This Act shall apply to any acts committed prior to, on, or after its effective date." Id., § 7 at 755.

On December 31, 2008, Tongg petitioned the circuit court to terminate his registration requirement under HRS § 846E-10. His petition was denied.

On April 16, 2025, Tongg filed a second petition to terminate his registration requirement. An order denying the petition was entered on June 5, 2025. This appeal followed.

Tongg's opening brief does not comply with Hawai'i Rules of Appellate Procedure Rule 28(b). To promote access to justice, we do not automatically foreclose self-represented litigants from appellate review for not complying with court rules. Erum v. Llego, 147 Hawai'i 368, 380-81, 465 P.3d 815, 827-28 (2020). We address what we discern to be Tongg's arguments.

(1) Tongg argues that "the Second Circuit lacked venue and authority to adjudicate [his] termination petition because the conviction, sentence, supervision, and discharge occurred in Honolulu in the First Circuit." His objection to venue is waived because he did not raise it in his petition. See Hawaii Ventures, LLC v. Otaka, Inc., 114 Hawai'i 438, 500, 164 P.3d 696, 758 (2007) (arguments not raised in circuit court are deemed waived on appeal); HRS § 641-2(b) (2016) ("The appellate court . . . need not consider a point that was not presented in the trial court in an appropriate manner.").

Regardless, termination of sex offender registration requirements is a civil proceeding. HRS § 846E-10(e), (f) (Supp. 2024).² For civil actions, venue lies "in the circuit where the claim for relief arose or where the defendant is domiciled[.]" HRS § 603-36(5) (2016). Tongg lived on Maui when he first petitioned for relief; his claim arose in the Second Circuit. He chose to file his second petition in his existing proceeding; the State did not move to change venue. See HRS § 603-37 (2016).

² Tongg's contention that a "termination petition under HRS chapter 846E is not a free-standing civil lawsuit; it is a post-conviction proceeding tied to the original criminal judgment" is wrong.

And even if venue should have been in the First Circuit, "requirements of venue may be waived."³ Alamida v. Wilson, 53 Haw. 398, 401, 495 P.2d 585, 588 (1972). Tongg's challenge to venue has no merit.

(2) Tongg contends "the Second Circuit's denial violated due process, ex post facto principles, and statutory requirements." We address them in reverse order.

(a) The circuit court correctly applied the statutory requirements. Tongg was convicted of Tier 3 offenses. See HRS § 846E-10(a) (Supp. 2024). When Tongg's second petition was filed, HRS § 846E-10 provided:

(a) Tier 3 offenses. A covered offender whose covered offense is any of the following offenses shall register for life and, except as provided in subsection (e), may not petition the court, in a civil proceeding, for termination of registration requirements[.]

. . . .

(e) Notwithstanding any other provisions in this section, any covered offender, **forty years** after the covered offender's date of release or sentencing, whichever is later, for the covered offender's most recent covered offense, may petition the court, in a civil proceeding, for termination of registration requirements.

(emphasis added).

"Release" means release from:

- (1) Imprisonment;
- (2) Imprisonment and placed on parole;
- (3) Imprisonment and placed on furlough;
- (4) Any form of commitment, custody, or confinement resulting from an order made pursuant to chapter 704; or
- (5) A halfway house or other equivalent facility, whichever is later.

HRS § 846E-1 (2014). HRS §§ 846E-1 and -10 were amended effective June 3, 2025, but the amendments are not material to

³ Tongg's argument that he filed his petition in the Second Circuit "because counsel advised him to do so" does not negate his waiver. "[T]he client is bound by his or her attorney's acts and/or failures to act within the scope of [the] attorney's authority." Off. of Disciplinary Couns. v. Gould, 119 Hawai'i 265, 271, 195 P.3d 1197, 1203 (2008).

this appeal. See 2025 Haw. Sess. Laws Act 149, §§ 2 & 5 at 340-45.

Tongg argues the "controlling discharge date is 1993," when he completed probation. But under HRS § 846E-1, the date of his "release" is the date he was released from imprisonment. His briefs do not identify the date he was released from imprisonment. Nor did his petition.

The State takes the position that "the operative date is 1989, the year Appellant Tongg was released from jail." Mittimus for Tongg's six-month prison term was effective October 6, 1988. Nothing in the record shows an early release. Accordingly, Tongg's "date of release" for purposes of HRS § 846E-10(e) is April 5, 1989. As a Tier 3 offender, he may not petition for termination of his registration requirement until April 5, 2029. The circuit court correctly applied HRS § 846E-10(e).

(b) Tongg argues that "application of Act 80 and later amendments violates ex post facto protections." His argument is waived because he did not raise it in his petition. Regardless, he appears to refer to 2008 Haw. Sess. Laws Act 80, § 9, which amended HRS § 846E-10. HRS Chapter 846E is remedial in intent and effect, and does not violate the federal ex post facto clause, article I, section 10 of the United States Constitution. State v. Guidry, 105 Hawai'i 222, 235-36, 96 P.3d 242, 255-56 (2004).

(c) Tongg argues he "was entitled to an individualized risk hearing" under State v. Bani, 97 Hawai'i 285, 36 P.3d 1255 (2001), but was not given one in violation of his right to due process.

Article I, section 5 of the Hawai'i constitution provides: "No person shall be deprived of life, liberty or property without due process of law[.]" "[T]he minimum requirements of due process are notice and the opportunity to be heard." Guidry, 105 Hawai'i at 231, 96 P.3d at 251.

In Bani the supreme court held that "the State must allow a registered sex offender a meaningful opportunity to argue

that he or she does not represent a threat to the community and that public notification is not necessary, or that he or she represents only a limited threat such that limited public notification is appropriate." 97 Hawai'i at 298, 36 P.3d at 1268. HRS § 846E-10 was amended after Bani was decided. HRS § 846E-10(f) currently provides for a hearing to determine, among other things, whether the "covered offender is very unlikely to commit a covered offense ever again; and . . . [r]egistration by the covered offender will not assist in protecting the safety of the public or any member thereof."

"Because due process does not require that a hearing be held at any specific time, due process is satisfied so long as an offender is afforded a hearing at some time." Guidry, 105 Hawai'i at 234, 96 P.3d at 254. Tongg becomes eligible to petition for termination of his registration requirement on April 5, 2029. He would be entitled to an HRS § 846E-10(f) hearing, consistent with due process, at that time.

(3) Tongg argues that the transcript of the 2009 hearing on his first petition included the presiding judge's "recognition that Petitioner had rehabilitated and that risk was not an issue going forward." He doesn't cite to the record to support his argument. The court actually stated, "I don't think I need any factual hearing at this point." The first petition was denied because the court held, as a matter of then-applicable law, "the earliest that Mr. Tongg could apply for termination would be 15 years from 1997 or sometime in the year 2012."

(4) Tongg argues the order denying his second petition "lacked necessary findings and analysis." "Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 [(motion to dismiss)] or 56 [(motion for summary judgment)] or any other motion except as provided in subdivisions (b) and (c) of this rule." Hawai'i Rules of Civil Procedure Rule 52(a) (emphasis added). Subdivisions (b) and (c) pertain to jury-waived trials, and do not apply here. The circuit court's order was not required to include findings or a legal analysis.

The circuit court's October 23, 2025 *Final Judgment* is affirmed. All pending motions are denied.

DATED: Honolulu, Hawai'i, September 10, 2026.

On the briefs:

Robert Raymond Tongg,
Self-represented
Petitioner-Appellant.

/s/ Keith K. Hiraoka
Presiding Judge

/s/ Sonja M.P. McCullen
Associate Judge

Anne E. Lopez,
Candace J. Park,
Department of the
Attorney General,
for State of Hawai'i.

CONCURRING OPINION BY GLUCK, J.

I agree with the entirety of the majority's order except for section 2(c). There, I concur in the result only. Tongg has not challenged the constitutionality of HRS § 846E-10; accordingly, I would hold only that Tongg has not presented a cognizable argument to overturn the Circuit Court.

/s/ Daniel M. Gluck
Associate Judge