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NO. CAAP-24-0000452

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

RICHARD RAPOZO, Petitioner-Appellant,
v.
STATE OF HAWAII, Respondent-Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CASE NO. 1PR141000016 (1PC000051915))

SUMMARY DISPOSITION ORDER

(By: Wadsworth, Presiding Judge, McCullen and Guidry, JJ.)

Petitioner-Appellant Richard **Rapozo** appeals from the Circuit Court of the First Circuit's (**Rule 40 Court**) May 3, 2024 "Findings of Fact, Conclusions of Law and Order Granting in Part and Denying in Part Petitioner Rapozo's Remanded Claims from Petitioner's 8th Rule 40 Petition Filed in 2014" (**Rule 40 Order**).¹ (Formatting altered.)

In his points of error (**POE**) on appeal, Rapozo contends the Rule 40 Court erred when it (1) determined that the

¹ The Honorable Trish K. Morikawa presided.

Hawai'i Paroling Authority (**HPA**) did not deny him parole for his nonpayment of restitution (POE A); (2) imposed an inadequate remedy by ordering a new parole hearing (POE B and C); and (3) failed to address his request for an accounting of and reimbursement for restitution payments made (POE D).

Upon careful review of the record and the briefs submitted by the parties, and having given due consideration to the issues raised and the arguments advanced, we resolve this appeal as discussed below and affirm without prejudice to Rapozo seeking relief related to reimbursement of payments made under the illegal restitution sentence.

Nearly fifty years ago, a jury convicted Rapozo of murder in violation of Hawai'i Revised Statutes (**HRS**) § 707-701 (1976) in the shooting death of Robert Lee.² Rapozo v. State (**Rapozo I**), 150 Hawai'i 66, 69-70, 497 P.3d 81, 84-85 (2021). As part of his life sentence with the possibility of parole, the trial court "ordered restitution in the amount of \$11,109.33." Id. at 69, 497 P.3d at 84.

² At the time, HRS § 707-701 (1976) provided:

§ 707-701 Murder. (1) Except as provided in section 707-702, a person commits the offense of murder if [the person] intentionally or knowingly causes the death of another person.

(2) Murder is a class A felony for which the defendant shall be sentenced to imprisonment as provided in section 706-606.

(Formatting altered.)

Rapozo became eligible for parole in 2006. See id. at 68, 497 P.3d at 83. HPA has since denied all of Rapozo's requests for parole.

The instant appeal arises from Rapozo's eighth Hawai'i Rules of Penal Procedure (**HRPP**) Rule 40 petition, filed in 2014, which the Rule 40 Court denied without an evidentiary hearing.³ Id. at 75-76, 497 P.3d at 90-91. Rapozo appealed, and we affirmed. Rapozo v. State, 149 Hawai'i 104, 482 P.3d 567, No. CAAP-16-0000532, 2021 WL 945376, at *11 (App. Mar. 12, 2021) (mem. op.).

Rapozo filed an application for a writ of certiorari with the Hawai'i Supreme Court. In 2021, the supreme court held, among other things, that Rapozo raised the following colorable claims: (1) "the trial court erred by delegating the determination of the manner of payment of restitution to the [Department of Social Services and Housing⁴]; (2) "the trial court erred by ordering him to pay restitution without first determining whether he could afford to pay it"; (3) "HPA erred by denying parole for nonpayment of restitution"; and (4) "HPA erred by denying him parole for failure to complete or participate in the work furlough program." Rapozo I, 150 Hawai'i

³ The Honorable Richard K. Perkins presided.

⁴ Today, the Department of Social Services and Housing is called the Department of Corrections and Rehabilitation.

at 79-85, 497 P.3d at 94-100 (formatting altered). The supreme court remanded the case to the Rule 40 Court for further proceedings consistent with its opinion. Id. at 86, 497 P.3d at 101.

On remand, the Rule 40 Court held an evidentiary hearing on January 30, 2024 (**January 30, 2024 Evidentiary Hearing**). Rapozo offered into evidence, and the State stipulated to receive: two Saguaro Correctional Center Progress Reports from 2008 and 2010 (**Saguaro Progress Reports**); a 2011 response letter from Deputy Attorney General Lisa Itomura (**DAG Itomura**); two response letters from 2011 and 2013 from Hawai'i Department of Corrections and Rehabilitation (**DCR**) Contract Monitor Jeanette Baltero (**DCR Contract Monitor Baltero**); a 2013 response letter from Hawai'i Department of Public Safety (**DPS**) Administrator Shari Kimoto (**DPS Administrator Kimoto**); and a 2013 Crime Victim Compensation Commission Restitution/Compensation Fee Payment Report.

The State offered into evidence, and Rapozo stipulated to receive, the transcripts from the August 28, 2012 and July 29, 2013 HPA parole hearings. In addition, the State called Howard **Komori**, DCR's Mainland Branch Administrator, as a witness. Komori testified he did not place Rapozo on the work furlough transfer list because Rapozo had not completed an

(unwritten) substance abuse class requirement "made known to the Saguaro inmates through 'word of mouth.'"

At the end of the January 30, 2024 Evidentiary Hearing, the Rule 40 Court ordered supplemental briefing on restitution and resentencing due by March 11, 2024.

At the end of Rapozo's supplemental brief, he requested as a remedy that DCR "account for all payments that were taken from [Rapozo's] funds since 1979 for the purpose of making payments toward the illegally imposed restitution order and . . . return that money to [Rapozo]." The State did not make any counterarguments regarding this request.

Neither Rapozo nor the State raised the restitution reimbursement issue at the further hearing on April 16, 2024.

In its Rule 40 Order, the Rule 40 Court made the below findings of fact and conclusions of law and resolved the remanded grounds.

Regarding whether the "trial court erred by ordering [Rapozo] to pay restitution without first determining whether he could afford to pay it,"⁵ the Rule 40 Court determined that the

⁵ At the time Rapozo was initially sentenced, HRS § 706-605(1)(e) (1976) authorized a sentencing court to require defendants to pay victim restitution "in an amount [they] can afford to pay":

- (e) To make restitution or reparation to the victim or victims of [their] crime in an amount [they] can afford to pay, for loss or damage caused thereby
. . . .

(continued . . .)

trial court "did not conduct any such an analysis" and thus the "restitution order was illegal and must be stricken and an amended judgment must be issued." See Rapozo I, 150 Hawai'i at 82, 497 P.3d at 97 (holding Rapozo stated a colorable claim that he was ordered to pay restitution without consideration of his ability to pay).

Because the restitution sentence was illegal, the Rule 40 Court determined Rapozo's claim as to the trial court's delegation of the manner of payment was moot.

With respect to whether HPA improperly denied Rapozo parole in 2012 and 2013 for his nonpayment of restitution, the Rule 40 Court found it had not, because "the transcripts from the 2012 and 2013 parole hearings never mention [Rapozo]'s failure to pay restitution, nor do the written rulings based on the hearings."

Finally, the Rule 40 Court determined that HPA arbitrarily and capriciously denied Rapozo parole in 2013 for his failure to participate in work furlough, and instructed HPA to "conduct a new parole hearing and to specify the pathway to provide [Rapozo] with a meaningful opportunity to meet any

(. . . continued)

(Emphasis added.) Today, HRS § 706-605(7) (2014) expressly prohibits courts from considering a "defendant's financial ability to make restitution in determining the amount of restitution to order," though such consideration is required in "establishing the time and manner of payment." (Emphasis added.)

requirements necessary for him to be considered for parole, and for [Rapozo] to have formal notice of all requirements."

Per Rapozo's request, the Rule 40 Court held a hearing on May 14, 2024, so Rapozo "could address the court regarding restitution and the amended judgment" (**May 14, 2024 Restitution Resentencing Hearing**).

At the May 14, 2024 Restitution Resentencing Hearing, the State agreed that restitution should not have been ordered in this case based on the Rule 40 Court's findings and conclusions. That same day, the Rule 40 Court ordered the restitution provision stricken and entered an amended judgment in Rapozo's criminal case (1PC000051915) reflecting the removal of the restitution requirement.

Neither Rapozo nor the State raised the restitution reimbursement issue at the May 14, 2024 Restitution Resentencing Hearing.

A little over two weeks after entry of the amended judgment, on June 4, 2024, Rapozo filed a "Motion for Reimbursement of Work Wages Taken Illegally for Restitution Order in [Case] No. 51915 see STATE V. MURRAY (1980)" (**Motion for Reimbursement**), in which he again requested "reimbursement of funds taken illegally from [his] prison labor wages, with interest." (Formatting altered.)

Rapozo filed a notice of appeal on July 1, 2024, and an amended notice of appeal on July 17, 2024, to clarify he was only appealing from the Rule 40 Order.

(1) Rapozo first argues "ample evidence in the record . . . supports the finding that [he] was denied parole, at least in part, for nonpayment of restitution, and the [circuit court] erred when it concluded otherwise." The "ample evidence" to which Rapozo refers includes: (1) the Saguaro Progress Reports and (2) the letters from (a) DAG Itomura, (b) DCR Contract Monitor Baltero, and (c) DPS Administrator Kimoto.

"[J]udicial review, through an HRPP Rule 40 petition, of the HPA's decision to deny parole" is limited in scope, and Hawai'i courts have "recognized the need to preserve the parole board's discretion in granting or denying parole[.]" Williamson v. Hawai'i Paroling Auth., 97 Hawai'i 183, 194, 35 P.3d 210, 221 (2001). Absent HPA's "fail[ure] to exercise any discretion at all" or its arbitrary and capricious abuse of discretion, judicial intervention is typically avoided. Id. at 195, 35 P.3d at 222.

Here, Rapozo I held the HPA's parole denial warranted further review because the record did not contain evidence from the HPA members themselves as to whether they "considered the [restitution] condition in the 1979 minimum term order in denying Rapozo's parole." See 150 Hawai'i at 85, 497 P.3d at

100. On remand, the State produced that evidence – transcripts of the 2012 and 2013 HPA parole hearings – neither of which reflect a discussion of Rapozo's nonpayment of restitution as a factor.

At the 2012 parole hearing, discussion centered on Rapozo's "efforts . . . to prepare [himself] to be able to function as a good citizen." Rapozo explained he completed several skills-based courses, including "a [paralegal] correspondence course," "a course offered by the federal government for cook training, vocational training," and "a machine shop training course," in addition to "anger management, life skills, cognitive, and GED" programming. Nevertheless, the HPA chair stated the parole board was "not ready to parole [Rapozo] at this point," ordered Rapozo to reappear before the parole board in eleven months, and instructed Rapozo "to complete all [his] RAD-recommended programs."⁶ No party mentioned the restitution judgment.

At the 2013 parole hearing, Rapozo asked for a continuance due to issues with his housing. The HPA chair denied Rapozo's request for a continuance, explaining that he would not be paroled without having completed a work furlough program at O'ahu Community Correctional Center given the length

⁶ "RAD" appears to stand for "Reception, Assessment Diagnostic" programs.

of his incarceration. Again, no party mentioned the restitution judgment.

Moreover, none of the evidence Rapozo offers is from any of the HPA members who presided at his 2012 and 2013 parole hearings. See Rapozo I, 150 Hawai'i at 74-75, 85, 497 P.3d at 89-90, 100 (ignoring a declarant's assertions that Rapozo's parole denials were not based on his failure to pay restitution because the declarant was not a member of the three-member HPA that decided whether to grant parole). The Saguaro Progress Reports and various letters were not prepared by any of the HPA members tasked with granting or denying Rapozo's parole requests. See id.

Finally, several findings of fact in the Rule 40 Order indicate that the Rule 40 Court considered the evidence Rapozo offered and nevertheless determined, based on the parole hearing transcripts, that Rapozo's failure to pay restitution did not factor into HPA's decision to deny him parole. We decline to pass upon the Rule 40 Court's determination in this regard. See State v. Eastman, 81 Hawai'i 131, 139, 913 P.2d 57, 65 (1996) ("An appellate court will not pass upon the trial judge's decisions with respect to the credibility of witnesses and the weight of the evidence, because this is the province of the trial judge.").

Because the 2012 and 2013 parole hearing transcripts do not mention or discuss Rapozo's failure to satisfy the restitution judgment, and given the limited scope of judicial review of HPA's decisions to deny parole, the Rule 40 Court did not err by concluding "there [was] no evidence presented that the current HPA considered" the nonpayment of restitution as a factor. See Dan v. State, 76 Hawai'i 423, 428, 879 P.2d 528, 533 (1994) (reiterating right/wrong standard of review for a trial court's conclusions of law); Williamson, 97 Hawai'i at 195, 35 P.3d at 222.

(2) Rapozo next contends that the remedy of "[a] new parole hearing is insufficient," and instead requests an order for "his immediate release, or, in the alternative, [an] order that he be immediately transferred back to Hawai'i to participate in work furlough." Such an order, Rapozo argues, is expressly authorized by language in HRPP Rule 40(g)(1), which he incorrectly attributes to HRPP Rule 40(c)(3):

If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceeding, or with respect to custody based on such judgment, and such supplementary orders as to rearraignment, retrial, custody, bail, discharge or other matters as may be necessary or proper.

HRPP Rule 40(g)(1) (emphases added).

A convicted person possesses "no constitutional or inherent right . . . to be conditionally released before the expiration of a valid sentence." Greenholtz v. Inmates of Neb.

Penal & Corr. Complex, 442 U.S. 1, 7 (1979); Mujahid v. Apao, 795 F. Supp. 1020, 1024 (D. Haw. 1992) ("A proper application of Greenholtz requires the court to conclude that the [Hawai'i] parole statute does not create a liberty interest protected by the Due Process Clause.").

Courts reviewing a paroling authority's grant or denial of parole may compel the paroling authority to act when it is required to, but they "may not compel the [paroling authority] to act in any particular manner since such determinations lie within [the paroling authority's] statutory authority." State v. Schlarp, 541 P.2d 411, 414 (Ariz. Ct. App. 1975); see generally 67A C.J.S. Pardon & Parole § 64 (2026) ("Although the court may compel a parole board to act where it is required to act, a court does not have authority to compel the board to act in any particular manner, or to control its discretion, and the court may not conduct its own parole hearing on review of the denial of parole and order the parole board to release a prisoner on parole." (footnotes omitted)).

Here, the Rule 40 Court found HPA acted arbitrarily and capriciously when it denied Rapozo's requests for parole based on his failure to complete certain requirements, because Rapozo was not afforded "an opportunity to participate in the required programs and work furlough." The Rule 40 Court found in favor of Rapozo and directed HPA to "conduct a new parole

hearing and to specify the pathway to provide [Rapozo] with a meaningful opportunity to meet any requirements necessary for him to be considered for parole."

In light of the aforementioned principles, the Rule 40 Court acted within its authority by ordering HPA to conduct a new parole hearing. See, e.g., Schlarp, 541 P.2d at 414. Thus, it did not err by declining to order Rapozo's immediate release or participation in work furlough.

(3) Rapozo finally contends that, because the Rule 40 Court "held that the restitution judgment was an illegal sentence," he is "entitled to reimbursement for any money that was collected from him." Accordingly, Rapozo argues the Rule 40 Court should have ordered "an accounting of all funds seized from his accounts as payments of restitution and should have ordered [DCR] to return those funds to" him.

Here, Rapozo raised this issue before the Rule 40 Court in his supplemental brief on March 11, 2024. But, the January 30, 2024 Evidentiary Hearing (and further hearing on April 16, 2024) and May 14, 2024 Restitution Resentencing Hearing transcripts are devoid of any discussion regarding restitution reimbursement. Thus, nothing in the record indicates that the parties litigated the issue prior to the Rule 40 Court entering its Rule 40 Order.

After entering its Rule 40 Order, the Rule 40 Court entered an amended judgment in Rapozo's criminal case striking

the restitution requirement from the judgment of conviction and sentence. Rapozo himself then moved for reimbursement of the restitution he paid. Prior to the Rule 40 Court addressing Rapozo's motion, Rapozo filed a notice of appeal, divesting the Rule 40 Court of jurisdiction.

The Rule 40 Court resolved the issues on which the case was remanded by the supreme court; to that extent, it did not err. Any issues related to reimbursement of the restitution paid may require factual findings and input by the parties and should therefore be litigated in the first instance below.

Based on the foregoing, we affirm the Rule 40 Court's May 3, 2024 Rule 40 Order without prejudice to Rapozo seeking relief related to reimbursement of payments made under the illegal restitution sentence.

DATED: Honolulu, Hawai'i, October 23, 2026.

On the briefs:

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Lisa M. Itomura,
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for Respondent-Appellee.

/s/ Clyde J. Wadsworth
Presiding Judge

/s/ Sonja M.P. McCullen
Associate Judge

/s/ Kimberly T. Guidry
Associate Judge