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NO. CAAP-25-0000361

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

SOK H. PRUIN, Petitioner-Appellant,
v.
STATE OF HAWAIʻI, Respondent-Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CASE NO. 2CPN-24-0000002
(2PC031000290, 2PC031000621, 2PC041000054))

SUMMARY DISPOSITION ORDER
(By: Leonard, Presiding Judge, Hiraoka and McCullen, JJ.)

Petitioner-Appellant Sok H. **Pruin** appeals from the Circuit Court of the Second Circuit's (**Rule 40 Court**)[1] May 15, 2025 "Findings of Fact, Conclusions of Law, and Order Denying Petitioner's Motion to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody" (**Rule 40 Order**).[2] (Formatting altered.)

[1] The Honorable Peter T. Cahill presided.

[2] Pruin actually appeals from the March 20, 2025 denial of her proposed "Findings of Fact, Conclusions of Law, and Order Granting HRPP Rule 40 Petition," which is not an appealable order. Nonetheless, we construe Pruin's appeal as an appeal from the May 15, 2025 Rule 40 Order.

On appeal, Pruin contends the Rule 40 Court erred by denying her proposed findings, conclusions, and order, and by dismissing her Hawaiʻi Rules of Penal Procedure (**HRPP**) Rule 40 petition (**Rule 40 Petition**) without a hearing. To support her contentions, Pruin alleges the trial court did not advise her of the immigration consequences of her no contest plea. She thus claims her no contest plea was not entered into voluntarily and knowingly.

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.

In 2003 and 2004, Respondent-Appellee the **State** of Hawaiʻi charged Pruin with various drug offenses arising from three separate incidents in case numbers 2PC031000290, 2PC031000621, and 2PC041000054 (**the underlying criminal cases**).

In March 2004, the parties stipulated to, and the trial court granted, a continuance of the pretrial motions "based upon the need for the Defendant to explore immigration issues and for both parties to continue to work on a possible plea agreement." In June 2004, the trial court granted a second continuance to allow Pruin additional time "to explore immigration issues" and the parties further opportunity to negotiate a possible plea agreement.

At the change of plea hearing in October 2004, Pruin pled no contest to the charged offenses.

The court minutes from the change of plea hearing reflect that Pruin understood the immigration consequences of a conviction:

> The court advised defendant that a conviction would result in deportation and that defendant would be denied any opportunity to be naturalized as a U.S. citizen. The defendant indicated that she understood.

(Formatting altered and emphasis added.)

In addition, Pruin's change of plea form advised of possible deportation:

> I know that, if I am not a citizen of the United States, a conviction or a plea of guilty or no contest, whether acceptance of my plea is deferred or not, may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization under the laws of the United States.

(Formatting altered and emphasis added.) The change of plea form also informed Pruin that the State would urge the Hawaiʻi Paroling Authority (**HPA**) to release her for deportation to South Korea:

> At Defendant's hearing before the [HPA], the State will urge the HPA to release Defendant for deportation to the Republic of Korea by the United States Immigration and Naturalization Service (INS) upon completion of her one year mandatory prison term, with the understanding that Defendant will sign all documents necessary to secure her involuntary deportation by the INS, so that a federal detainer will be in place by the time of her HPA hearing. The parties request a presentence report.

(Formatting altered and emphasis added.) Pruin signed the form.

In January 2005, the trial court sentenced Pruin to, inter alia, imprisonment in the underlying criminal cases. Pruin did not appeal.

Four months later, in May 2005, Pruin was personally served with notice of deportation proceedings in accordance with section 239(a)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. § 1229(a)(1)(F).

Twelve years later, in June 2017, HPA filed an Order of Discharge in the underlying criminal cases to certify that Pruin served her sentences and that she was discharged from parole, effective August 28, 2014.

Almost eighteen years after the change of plea hearing, in September 2022, Pruin requested the transcripts from that hearing. The Court Reporters Office informed Pruin that the transcripts were "not available," as it does not and is not required to retain "notes beyond ten years."

In April 2024, Pruin filed her HRPP Rule 40 Petition, alleging she was not advised of the immigration consequences of her no contest plea, as required under Hawaiʻi Revised Statutes (**HRS**) § 802E-2 (2014), and invoking the presumption against the advisement having been given, pursuant to HRS § 802E-3 (2014). The Rule 40 Court denied Pruin's HRPP Rule 40 Petition without a hearing.

We review the denial of an HRPP Rule 40 petition without a hearing de novo. Dan v. State, 76 Hawaiʻi 423, 427, 879 P.2d 528, 532 (1994).

"The U.S. Constitution and the Hawaiʻi Constitution require a plea to be voluntarily and knowingly entered." Eason v. State, 157 Hawaiʻi 252, 271, 576 P.3d 765, 784 (2025). "Hawaiʻi case law requires the circuit court [to] make an affirmative showing by an on-the-record colloquy wherein the defendant is shown to have a full understanding of what the plea of guilty . . . connotes and its consequences." Id. at 272, 576 P.3d at 785 (citation modified).

"When the record is not silent or minimal, the petitioner seeking relief under Rule 40 on the ground that the guilty plea was entered involuntarily has the burden 'to prove by a preponderance of the evidence that his constitutional right was not voluntarily and intelligently waived.'" Id. (quoting Eli v. State, 63 Haw. 474, 477, 630 P.2d 113, 116 (1981)).

HRPP Rule 40(f) dictates whether an evidentiary hearing is required:

> If a petition alleges facts that if proven would entitle the petitioner to relief, the court shall grant a hearing which may extend only to the issues raised in the petition or answer. However, the court may deny a hearing if the petitioner's claim is patently frivolous and is without trace of support either in the record or from other evidence submitted by the petitioner.

Thus, a hearing should be held if the HRPP Rule 40 petition states a colorable claim. "To establish a colorable claim, the allegations of the petition must show that if taken as true the facts alleged would change the verdict." Dan, 76 Hawaiʻi at 427, 879 P.2d at 532 (quoting State v. Allen, 7 Haw. App. 89, 92, 744 P.2d 789, 792 (App. 1987)).

But the court need not hold a hearing if the claim is patently frivolous and without a trace of support either in the record or from other evidence the petitioner submits. HRPP Rule 40(f). It is not error to deny the HRPP Rule 40 petition without a hearing "[w]here examination of the record of the trial court proceedings indicates that the petitioner's allegations show no colorable claim." Dan, 76 Hawaiʻi at 427, 879 P.2d at 532 (quoting Allen, 7 Haw. App. at 92, 744 P.2d at 792).

We note that, at the time of Pruin's change of plea hearing in 2004, HRS § 802E-2 required a different immigration advisement than it does today. HRS § 802E-2 (1993) provided:

> **Court advisement concerning alien status required.** Prior to acceptance of a plea of guilty or nolo contendere to any offense punishable as a crime under state law, except offenses designated as infractions under state law, the court shall administer the following advisement on the record to the defendant:
>
> > If you are not a citizen of the United States, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

> Upon request, the court shall allow the defendant additional time to consider the appropriateness of the plea in light of the advisement as described in this section.

(Formatting altered and emphasis added.)

And, under the substantially similar 1993 version of HRS § 802E-3, a defendant is presumed not to have received the required immigration advisement, unless the record reflects otherwise:

> **Failure to advise; vacation of judgment.** If the court fails to advise the defendant as required by section 802E-2 and the defendant shows that conviction of the offense to which the defendant pleaded guilty or nolo contendere may have the consequences for the defendant of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States, on defendant's motion, the court shall vacate the judgment and permit the defendant to withdraw the plea of guilty or nolo contendere, and enter a plea of not guilty. Absent a record that the court provided the advisement required by this section, the defendant shall be presumed not to have received the required advisement.

HRS § 802E-3 (1993) (emphasis added).

Here, the record is not silent. See Eason, 157 Hawaiʻi at 274, 576 P.3d at 787 (holding record was not silent despite absence of change of plea hearing transcript, and rejecting petitioner's assertion that "no record exists" where clerk's minutes and signed change of plea form were in record) ("Although the record does not contain an on-the-record colloquy due to the disposal of certain records, we evaluate the entire record in order to determine whether [the petitioner]'s claims are credible and worthy of belief.").

The court minutes from the change of plea hearing reflect that the trial court advised Pruin that she would be deported if convicted:

> The court advised defendant that a conviction would result in deportation and that defendant would be denied any opportunity to be naturalized as a U.S. citizen. The defendant indicated that she understood.

(Formatting altered.)

We also note that, prior to the change of plea hearing, Pruin twice stipulated to continuances of the underlying criminal cases to allow time "to explore immigration issues and . . . to work on a possible plea agreement," demonstrating that Pruin was aware of potential immigration consequences. And Pruin's change of plea form contained several advisements, including one that substantially tracked the original advisement of HRS § 802E-2 and another that informed Pruin the State would urge HPA to release her for deportation.

As such, Pruin's claim that her no contest plea was not made knowingly and voluntarily (based on her allegation that the trial court failed to advise her of the immigration consequences) is patently frivolous and without a trace of support in the record. See HRPP Rule 40(f); see also Den Van Nguyen v. State, 128 Hawaiʻi 311, 288 P.3d 129, No. CAAP-11-0000575, 2012 WL 4454735, at *2 (App. Sep. 26, 2012) (SDO) (holding petitioner "waived his right to seek relief based on HRS §§ 802E-2 and 802E-3," because he "waited until after the

court reporter's records were disposed of, in conformity with the records retention schedule for circuit courts, and a transcript of his no-contest plea hearing could not be produced, to file his Petition" and "provide[d] no explanation, much less extraordinary circumstances, to justify his inordinate delay in raising the issues asserted in his Petition").

Based on the foregoing, we affirm the May 15, 2025 Rule 40 Order.

DATED: Honolulu, Hawaiʻi, November 16, 2026.

On the briefs:

Emmanuel G. Guerrero,
for Petitioner-Appellant.

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

/s/ Katherine G. Leonard
Presiding Judge

/s/ Keith K. Hiraoka
Associate Judge

/s/ Sonja M.P. McCullen
Associate Judge