

NO. 23289

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

MAXIMIANO CONSTANTINO, Petitioner-Appellant, v.
STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT
(SPP NO. 00-01-001)

SUMMARY DISPOSITION ORDER
(By: Burns, C.J., Lim and Foley, JJ.)

Petitioner-Appellant Maximiano Constantino
(Constantino) appeals from the March 14, 2000, "Findings of Fact;
Conclusions of Law; Order Denying Petition for Post-Conviction
Relief" (Order) entered by Judge George M. Masuoka of the Fifth
Circuit Court (the circuit court). The circuit court's Order
dismissed Constantino's Rule 40 petition on grounds that the
claims raised therein were "patently frivolous" and "without a
trace of support either in the record, or in any other evidence
submitted by [Constantino]."

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 by the parties, we
resolve Constantino's points of error as follows:

(1) Constantino contends that he is entitled to
withdraw his no contest plea and proceed to trial. A defendant

is entitled to withdraw his or her guilty plea after imposition of sentence only upon a showing of manifest injustice, occurring when a defendant makes a plea involuntarily or without knowledge of the direct consequences of his plea. Barnett v. State, 91 Hawai'i 20, 28, 979 P.2d 1046, 1054 (1999). No manifest injustice occurs when the trial court makes an affirmative showing through an on-the-record colloquy between the court and the defendant which shows that the defendant had a full understanding of what his or her plea connoted and its direct consequences. State v. Cornelio, 68 Haw. 644, 646-47, 727 P.2d 1125, 1127 (1986). On July 23, 1998, the circuit court engaged Constantino in an on-the-record colloquy in open court establishing that he understood his rights and that by entering his no contest plea, he knowingly and voluntarily waived them.

(2) Constantino contends that the circuit court erred in finding he was not denied effective assistance of counsel. Constantino fails to show that defense counsel's assistance fell below the range of competence demanded of criminal defense attorneys or resulted in the withdrawal or substantial impairment of a potentially meritorious defense. Dan v. State, 76 Hawai'i 423, 427, 879 P.2d 528, 532 (1994).

Therefore,

IT IS HEREBY ORDERED that the March 14, 2000, Findings of Fact; Conclusions of Law; Order Denying Petition for Post-Conviction Relief is affirmed.

DATED: Honolulu, Hawai'i, June 7, 2001.

On the briefs:

Maximiano Constantino,
petitioner-appellant, pro se.

Tracy Murakami,
Deputy Prosecuting Attorney,
County of Kaua`i,
for respondent-appellee.

Chief Judge

Associate Judge

Associate Judge