

NO. 23134

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellee

vs.

DALE ROY GUSHIKEN, Defendant-Appellant

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APPEAL FROM THE SECOND CIRCUIT COURT  
(CR. NO. 98-0698(1))

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama and Acoba, JJ.  
and Circuit Judge Nakatani, in place of Ramil, J., recused)

Upon review of the record, it appears that: (1) Defendant-Appellant Dale Roy Gushiken filed a notice of appeal on February 1, 2000; (2) Appellant passed away during the pendency of the appeal; (3) pursuant to State v. Makaila, 79 Hawai'i 40, 897 P.2d 967 (1995), if a criminal appellant dies during the pendency of a direct appeal, the criminal appellant's personal representative or the State may file for substitution of party-defendant to litigate the appeal; and (4) no substitution of party has been filed. Therefore,

IT IS HEREBY ORDERED that this appeal is dismissed.

DATED: Honolulu, Hawai'i, September 29, 2000.