

*** NOT FOR PUBLICATION ***

NO. 23292

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

RANDY SALVIEJO, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 94-1857)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Duffy, JJ.
and Acoba, J., dissenting)

Defendant-appellant Randy Salviejo (Salviejo) appeals from the March 17, 2000 order of the circuit court granting motion for enforcement of full payment of restitution. On appeal, Salviejo argues that the circuit court erred in granting the motion for enforcement of full payment of restitution, inasmuch as (1) the circuit court lacked authority to sentence Salviejo with a free-standing order of restitution without having convicted him of any offense, (2) the circuit court abused its discretion to the extent it purported to extend Salviejo's deferral period beyond the maximum allowable under Hawai'i Revised Statutes (HRS) HRS § 853-1(b) (1993), (3) the circuit court abused its discretion in granting the motion for enforcement of full payment of restitution because Salviejo complied with all the conditions of the circuit court's order deferring acceptance of his no-contest plea, and (4) the circuit court committed plain error by issuing a restitution order without first making any findings regarding Salviejo's ability to pay.

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Upon carefully reviewing the record and the briefs submitted and having given due consideration to the arguments advanced and the issues raised, we hold that this court does not have jurisdiction in this case, inasmuch as the case is still pending in the circuit court, and, therefore, there is no sentence from which Salviejo can seek appellate relief. See HRS § 641-11. This is an interlocutory order and this case does not fit within the narrow parameters of State v. Baranco, 77 Hawai'i 351, 884 P.2d 729 (1994). Therefore,

IT IS HEREBY ORDERED that this case is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, December 30, 2003.

On the briefs:

David A. Fisher,
Deputy Public Defender,
for defendant-appellant

Caroline M. Mee,
Deputy Prosecuting Attorney,
for plaintiff-appellee