DISSENTING OPINION BY ACOBA, J.

I disagree with the majority's holding that this court has jurisdiction over the appeal, and because I conclude that this court lacks jurisdiction, I do not address the merits of the appeal.[1] See Price v. Obayashi Hawaii Corp., 81 Hawai'i 171, 174-75, 914 P.2d 1364, 1367-68 (1996) ("'Jurisdiction is the base requirement for any court considering and resolving an appeal or original action. Without jurisdiction, a court is not in a position to consider the case further.'" (Quoting Wong v. Wong, 79 Hawai'i 26, 29, 897 P.2d 953, 956 (1995) (citations omitted))).

I believe a reasoned in pari materia interpretation of Hawai'i Rules of Appellate Procedure (HRAP) Rules 2.1(a), 4(b)(1), and 4(b)(3) and Hawai'i Rules of Penal Procedure (HRPP) Rule 2 would deem the notation of the court's order on the court calendar by the clerk as the entry of the order and, therefore, tantamount to the filing thereof so as to satisfy HRAP Rule 4(b)(3).[2] Thus, unlike the majority, I am of the opinion that a party may appeal from a final order that is noted on the district court's calendar, and that the time for appeal commences

[1] Oral argument in this case was held on September 4, 2002.

[2] This is analogous to the procedure set forth in HRPP Rule 32(c)(2), see infra page 6, as to the entry of a judgment of conviction in the district court and is the procedure set forth for entry of orders in criminal cases in the district court in HRPP Rule 44(b)(1) which became effective during the pendency of this case. See infra Part VI.B.

at that point rather than from a separate written judgment that may be filed at any time.

I believe this interpretation best comports with simplicity, fairness, and the elimination of unjustifiable expense and delay. The majority's approach of requiring a separate written judgment to be filed is contrary to an in pari materia reading of the relevant rules, the import of past precedent, and reason. The course chosen by the majority will cause an increased burden upon the district courts, counsel, the Intermediate Court of Appeals, and this court. In light of past practice, it is likely that nearly every district court case in which a final order is appealed from will have to be remanded for entry of a judgment in the form of a separate document, causing substantial delay and expense. Moreover, because the majority approach allows the filing of a separate judgment to be done at any time, it permits manipulation of the appeals process by one party to the substantial detriment of the opposing party and is thus inimical to the fair administration of the rules.

Applying an in pari materia approach, I would hold that the appeal of Plaintiff-Appellant State of Hawai‘i (the prosecution) from the January 31, 2001 order of the district court of the first circuit (the court) granting the motion to suppress evidence filed by Defendant-Appellee Alicia Anne Bohannon (Defendant), and its January 22, 2001 order denying reconsideration was untimely because the time for appeal ran from

May 26, 2000, the date the court's order was entered on the court's calendar, and not from the date of a separate written order filed with the clerk some eight months later.[3] Justice Ramil, who retired on December 30, 2002 and had heard oral argument in this case, had joined in this position.

I.

Prior to trial in this case, Defendant moved to suppress all evidence obtained after the unlawful stop of her car. The court found that the prosecution failed to meet its burden of bringing the seizure of Defendant within a recognized exception to the warrant requirement. On May 26, 2000, the court granted Defendant's motion to suppress and dismissed the case by decision and oral order. The court clerk made a notation of the decision on the court calendar on the same day. There were no rules applicable to criminal cases in the district court that required the court to make findings of fact or conclusions of law at the time and no findings or conclusions of law are in the record on appeal.

The prosecution did not appeal from the May 26, 2000 notated order but, instead, moved for reconsideration of the

[3] I would follow the same rationale with respect to a judgment of conviction as entered on the district court calendar pursuant to HRPP Rule 32(c)(2), rather than require the filing of a separate judgment of conviction as the majority has required. See State v. Misuraca, No. 25426 (July 28, 2003) (unpublished order for remand) (Acoba, J., dissenting) ("I do not agree that this appeal is premature and need be remanded to the district court for entry of a written judgment according to [HRAP] Rule 4(b)(3), inasmuch as [HRPP] Rule 32(c)(2) applies.").

court's order on June 13, 2000. In its motion for reconsideration, the prosecution, for the first time, argued that the arresting officer's actions in this case fit within the "public safety" exception to the warrant requirement and advocated adoption of this exception.

The court orally denied the motion for reconsideration on July 17, 2000, and the clerk entered the order on the court calendar. A written order denying the motion for reconsideration was later filed on December 11, 2000 and signed on January 22, 2001 (the January 22, 2001 order). The written order granting the motion to suppress was filed on January 25, 2001 and signed on January 31, 2001 (the January 31, 2001 order), after the order denying reconsideration. On February 15, 2001, the prosecution appealed.

On appeal, Defendant contends, inter alia, that the prosecution's appeal was untimely because the prosecution was required to appeal within thirty days of the clerk's notation on the court's calendar on May 26, 2000, pursuant to HRPP Rule 32(c)(2) (2000). Defendant maintains that, inasmuch as the prosecution did not appeal until February 15, 2001, eight months and ten days later, its appeal was late.

On the other hand, the prosecution argues that its notice of appeal was timely filed on February 15, 2001. According to the prosecution, the filing with the court clerk of the January 22, 2001 written order denying the motion for

reconsideration and the January 31, 2001 written order granting the motion to suppress "constituted 'entry' of the orders for purposes of [HRAP Rule 4(b)(1)][.]"[4] As such, the prosecution asserts that its February 15, 2001 notice of appeal, "filed within 30 days after entry of the above orders, was timely."

II.

It is well established that the interpretation of rules promulgated by the supreme court involves principles of statutory construction. See State v. Lei, 95 Hawai'i 278, 281, 21 P.3d 880, 884 (2001); State v. Lau, 78 Hawai'i 54, 58, 890 P.2d 291, 295 (1995); Keaulii v. Simpson, 74 Haw. 417, 421, 847 P.2d 663, 666, reconsideration denied, 74 Haw. 650, 853 P.2d 542, cert. denied, 510 U.S. 814 (1993). "The interpretation of a statute is a question of law which this court reviews de novo." Konno v. County of Hawai'i, 85 Hawai'i 61, 71, 937 P.2d 397, 407 (1997) (quoting State v. Toyomura, 80 Hawai'i 8, 18, 904 P.2d 893, 903 (1995) (citation omitted)). Therefore, the interpretation of HRPP Rule 32 (2000) and HRAP Rule 4 is a question of law reviewable de novo.

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[4] HRAP Rule 4(b)(1) states:

> **(b) Appeals in Criminal Cases.**
> (1) *Time and Place of Filing.* In a criminal case, the notice of appeal shall be filed in the circuit, district, or family court within 30 days after the entry of the judgment or order appealed from.

(Emphasis added.)

III.

HRPP Rule 32(c) directs that, in the district court, judgments of conviction are deemed entered by the notation of the judgment on the court calendar. In relevant part, Rule 32(c)(2) provides that

> [a] judgment of conviction in the district court shall set forth the disposition of the proceedings and the same shall be entered on the record of the court. The notation of the judgment by the clerk on the calendar constitutes the entry of the judgment.

(Emphases added.) As stated, supra, principles of statutory construction apply to the interpretation of court rules. The language of HRPP Rule 32(c)(2) is "plain and unambiguous." Applying its "plain and obvious meaning[,]" Rule 32(c)(2) applies only to judgments of conviction. See Konno, 85 Hawai'i at 71, 937 P.2d at 407 ("[W]here the language of the statute is plain and unambiguous, our only duty is to give effect to its plain and obvious meaning." (Citations omitted.)). Here, Defendant was not convicted, and, thus, no judgment of conviction was entered. Therefore, HRPP Rule 32(c)(2) does not apply to the case at bar.

IV.

On the other hand, HRAP Rules 2.1(a), 4(b)(1), 4(b)(3), and HRPP Rule 2 are relevant to this case and rules upon the same subject matter should be construed with reference to each other. Cf. HRS 1-16 (1993) ("Laws in pari materia, or upon the same subject matter, shall be construed with reference to each other. What is clear in one statute may be called in aid to explain what

is doubtful in another."); Canalez v. Bob's Appliance Serv. Ctr., Inc., 89 Hawai'i 292, 306, 972 P.2d 295, 310 (1999) (taking an in pari materia reading of HRS § 607-9 and Hawai'i Rules of Civil Procedure Rule 68).

A.

As previously indicated, HRAP Rule 4(b)(1) provides that a notice of appeal in criminal cases must be filed within thirty days of the order appealed from. See supra note 4. HRAP Rule 4(b)(3) explains that an order is deemed entered when it is filed with the clerk. "A judgment or order is entered within the meaning of [HRAP Rule 4(b)(1)] when it is filed with the clerk of the court." HRAP Rule 4(b)(3). HRAP Rule 2.1(a) (2001) incorporates other court rules into the HRAP, including the HRPP.[5] HRPP Rule 2 sets forth the purposes and principles for construction of the HRPP.

> These rules are intended to provide for the just determination of every penal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

[5] HRAP Rule 2.1 states as follows:

> The Hawai'i Rules of Civil Procedure, the Hawai'i Rules of Penal Procedure, the District Court Rules of Civil Procedure, the Rules of the Circuit Courts, Hawai'i Family Court Rules, Rules of the Land Court, Rules of the Tax Appeal Court, Rules Governing Court Reporting, the Hawai'i Appellate Conference Program Rules, and other rules of court that may be adopted by the supreme court from time to time are hereby adopted as a part of these rules whenever applicable.

(Emphases added.)

HRPP Rule 2 (2000) (emphases added). Insofar as the HRPP may be treated as part of the HRAP "whenever applicable," it is reasonable to consider the purposes set forth in HRPP Rule 2 in construing the HRAP as it relates to criminal case appeals from the district court. In that light, the prosecution's urging that an order appealed from is deemed "entered" for purposes of HRAP Rule 4(b)(1) when a separate order is filed with the district court conflicts with the purposes stated in HRPP Rule 2.

The clerk entered the court's decision and order on the court calendar on May 26, 2000. The making of such a notation plainly "secure[d] simplicity in procedure[.]" HRPP Rule 2 (emphasis added); see generally HRPP Rule 50 ("The district and circuit courts may provide for placing criminal proceedings upon appropriate calendars."); cf. State v. Nishi, 9 Haw. App. 516, 526, 852 P.2d 476, 481 (1993) ("[A] district court judgment consists of the clerk's notation on the court's daily calendar containing numerous cases." (Citing HRPP Rule 32(c)(2).)).

Employing this notation procedure also avoids unjustifiable expense and delay because it promotes efficiency in the district court, where the caseload is a heavy one. See State v. Graybeard, 93 Hawai'i 513, 517, 6 P.3d 385, 389 (App. 2000) (stating that "[t]he simple expedien[cy] permitted by HRPP Rule 32(c)(2) [in the district court] subserves . . . the goal of efficiency in a court that carries a multitude of cases").

Finally, the notation procedure which establishes a firm date from which to measure appeal time as of the rendering of the court's order promotes fairness in the administration of the rules. By contrast, the majority's approach allows for manipulation of the date of filing an appeal without any timely connection to the court's actual decision. Under the majority's holding, a party would be able to suspend the filing of an appeal, irrespective of when the district court rendered its decision, as long as it appealed within thirty days of the date the separate order was eventually filed.

As mentioned, the court, by decision and order of May 26, 2000, suppressed the evidence obtained in the search and dismissed the case against Defendant. The prosecution did not appeal the May 26, 2000 oral order, but instead moved for reconsideration. On July 17, 2000, the court denied the prosecution's motion for reconsideration. Five months later, on December 11, 2000, the prosecution filed a document it had prepared entitled "Order Denying Motion to Reconsider Order Granting Motion to Suppress Evidence." Eight months after the May 25, 2000 Order, on January 25, 2001, the prosecution filed another document entitled "Order Granting Motion to Suppress Items of Evidence." Finally, nearly nine months after the court rendered its decision by order of May 26, 2000, on February 15,

2001, the prosecution appealed from the January 31, 2001 order.[6]

B.

The notation procedure satisfies HRAP Rule 4(a)(3) since the entry of the order is tantamount to a filing of the order. Like the filing of a separate document with the clerk, a notation by the clerk establishes a record of the decision.[7] Because the notation of an order by the court clerk constitutes the entry thereof, it is functionally equivalent to filing a separate document with the clerk, as envisioned in HRAP Rule 4(b)(3).[8] Cf. Child Support Enforcement Agency v. Roe, 96 Hawai‘i

[6] It is clear that if the majority's approach is utilized and the time for appeal begins to run only from the filing of a written judgment, the time for appeal can be manipulated. In this case, according to the majority's definition of judgment, the court's judgment on the prosecution's motion for reconsideration was filed on December 11, 2000 and signed on January 22, 2001, before the judgment dismissing the case and suppressing evidence, which was filed on January 25, 2001 and signed on January 31, 2001. Obviously, the judgment dismissing the case and suppressing the evidence should precede the motion for reconsideration.

[7] The statutes appear to contemplate that criminal appeals from the district court shall be from the record. HRS § 641-12 (1993), which pertains to appeals from the district courts, provides in pertinent part that

> [a]ppeals upon the record shall be allowed from all final decisions and final judgments of the district courts in criminal matters. Such appeals may be made to the supreme court . . . whenever the party appealing shall file a notice of the party's appeal within 30 days, or such other time as may be provided by the rules of court."

(Emphases added.) The plain language of this statute indicates that an appeal is from the record. This construction is further buttressed by HRS § 641-11 (1993), which contrastingly states, regarding appeals from the circuit court, that "[a]ny party deeming oneself aggrieved by the judgment of a circuit court in a criminal matter, may appeal to the supreme court, subject to chapter 602 in the manner and within the time provided by the Hawai‘i Rules of Appellate Procedure."

[8] This application of HRAP Rule 4(b)(3) is consistent with the recent amendment of HRPP Rule 44(b)(1) (effective July 1, 2000). See infra (continued...)

1, 15, 25 P.3d 60, 74 (2001) (holding that the unequivocal notification by a court to a party of a discovery requirement that the court expects that party to obey, under appropriate circumstances, is "treated as the functional equivalent of an order compelling discovery"); LeMay v. Leander, 92 Hawai'i 614, 623, 994 P.2d 546, 555 (2000) (concluding that a violation of an injunction, by definition, is the functional equivalent of contempt); Casumpang v. ILWU, Local 142, 91 Hawai'i 425, 427, 984 P.2d 1251, 1253 (1999) ("[A]n order that fully disposes of an action in the district court may be final and appealable without the entry of judgment on a separate document, as long as the appealed order ends the litigation by fully deciding the rights and liabilities of all parties and leaves nothing further to be adjudicated." (Emphasis added.)); State v. Miyashiro, 90 Hawai'i 489, 492, 979 P.2d 85, 88 (App. 1999) (determining that a court's response to a jury communication is the functional equivalent of an instruction).

In light of the parallel purpose served by the notation procedure, an order may be deemed "entered" and, thus, "filed" in the district court for the purpose of HRAP Rule 4(b)(3), when the clerk notes the order on the court calendar.[9] Thus, the

[8](...continued)
note 10.

[9] Alternatively, this court could waive the HRAP Rule 4(b)(3) provision, by applying HRAP Rule 2, which states as follows:

> In the interest of expediting a decision, or for other good cause shown, either Hawai'i appellate court may suspend the
(continued...)

requirements of HRAP 4(b)(3) are not ignored, but the entry of an order by the clerk on the court calendar is treated as the functional equivalent of the filing of such an order, on the rationale discussed above.

In light of the foregoing, and under the conditions prevalent in the district court, the notation procedure is the method that maintains simplicity, avoids unjustifiable delay and expense, and promotes "fairness in administration."[10] HRPP Rule 2.

[9](...continued)

> requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction.

(Emphases added.) In view of the number of cases that will be affected, I would, in the alternative, apply HRAP Rule 2. But, a majority of this court has refused this approach. See Misuraca, No. 25426 (July 28, 2003) (unpublished order for remand). The delay accompanying the majority's approach and the increased burden upon this court and the district court is patent.

[10] As mentioned, findings of fact and conclusions of law were not filed in this case. In line with the notation procedure, had the court decided to enter findings of fact and conclusions of law, orally or in written form, that entry should have been made prior to or along with its order.

After July 1, 2000, pursuant to HRPP Rule 44(b)(2), if the court entered findings of fact, conclusions of law, and an order, the filing of such would constitute entry of the order.

> Where the court orders preparation of findings of fact, conclusions of law and order, the findings, conclusions and order shall be prepared and settled as provided for in subsection (a) of this rule. The filing of the findings, conclusions and order in the office of the clerk shall constitute entry of the order.

HRPP Rule 44(b)(2).

V.

A.

With all due respect, I do not find the majority's position persuasive. The majority states that "HRAP Rule 4(b) . . . requires that a final and appealable judgment or order in criminal cases be in written form." Majority opinion at 14 (citing State v. Ho, 7 Haw. App. 516-19, 782 P.2d 29, 31 (1989), overruled on other grounds by, State v. Hoey, 77 Hawai'i 17, 30, 881 P.2d 504, 516 (1994)) (emphasis added). The Ho case dealt not with a "final and appealable judgment," but with the issue of "whether the 108-day delay occasioned by the State's interlocutory appeal from the lower court's oral suppression order is excludable under . . . [HRPP R]ule [48]." Ho, 7 Haw. App. at 518, 782 P.2d at 30 (emphasis added) (footnote omitted). Second, HRAP Rule 4(b) does not in any way state that the order entered and appealed from must be in a separate document as the majority holds. Third, here, the clerk made a notation on the court calendar, which is in "written" form pursuant to the court's order and, as such, was tantamount to the filing of such an order in satisfaction of HRAP Rule 4(b)(3).

B.

The majority notes that HRPP Rule 44(b)(1) "was in effect on July 17, 2000, the time at which the district court announced its oral order denying the prosecution's motion for

reconsideration[.]" Majority opinion at 15. HRPP Rule 44(b)(1) would apply to all orders entered by the district court after the rule's effective date of July 1, 2000. HRPP 44(b)(1) states as follows: "After the decision or ruling of the court following a hearing on a motion, the clerk shall note the decision or ruling on the calendar. The notation of the decision or ruling on the calendar shall constitute the order and entry thereof." (Emphasis added.) Thus, if the order granting the motion to suppress in the present case was issued subsequent to the effective date of HRPP Rule 44(b)(1), that rule would control.

Given a plain reading of Rule 44(b)(1), the time for appeal would begin to run upon the clerk's notation on the court calendar. Such notation under the rule constituted not only the order, but the "entry thereof." It would make no sense to require an order already entered to be again subsequently "filed." Therefore, I do not find compelling the majority's contention that although HRPP Rule 44(b)(1) "prescribes the procedure by which an order becomes final in the district courts[,] the order . . . does not become appealable until a separate written order has been filed with the clerk of the court in accordance with HRAP Rule 4(b)(3)." Majority opinion at 15 (footnote and emphases omitted) (emphasis added). A plain language reading of HRPP Rule 44(b)(1) yields no indication that a separate written order must be filed. Rather, the entry in fact constitutes such filing under HRAP Rule 4(b)(3). The

majority cites no authority for its dicta with respect to HRPP Rule 44(b)(1).

Of course, although discussed by the majority, it is of no consequence that HRPP Rule 44(b)(1) was in effect at the time the prosecution's motion for reconsideration was denied because the motion did not toll the time for appeal. A motion for reconsideration is not a tolling motion.[11] The majority's discussion of Rule 44(b)(1) as requiring the separate filing of an order is therefore a gratuitous one.

VI.

Here, the court announced the order granting the motion to suppress and dismissing the case on May 26, 2000. The clerk noted the decision and order on the court calendar on the same day. In my view, the order therefore should have been appealed

[11] The prosecution argues that its filing of the motion for reconsideration tolled the time for appeal. The prosecution is mistaken. In State v. Brandimart, 68 Haw. 495, 720 P.2d 1009 (1986), this court held that a motion to reconsider filed by the prosecution under HRPP Rule 47 following the granting of a motion to suppress does not toll the time for appeal of the suppression order. The Brandimart court reasoned:

> Rule 47 of HRPP is silent as to any tolling of time for filing a notice of appeal. Under Rule 4(b) of HRAP, only a timely motion in arrest of judgment or for a new trial is a tolling motion.
> . . . .
> HRAP and HRPP are silent as to whether [a] motion [for reconsideration] tolls the thirty (30) day period for filing a notice of appeal. In the absence of an express statement to the contrary, we hold that the motion for reconsideration is not a tolling motion.

Id. at 497, 720 P.2d at 1010 (emphases added). Under Brandimart, the prosecution's motion for reconsideration is not a tolling motion. Therefore, the motion for reconsideration on June 13, 2000 did not toll the time for appeal of the trial court's oral order.

within thirty days of May 26, 2000. Insofar as the prosecution did not appeal from the court's order on or prior to June 25, 2000, the thirtieth day after the order's entry, I believe its notice of appeal filed on February 15, 2001 was untimely. Consequently, I would hold that this court lacks jurisdiction. See HRAP Rule 4(b)(3); Security Pac. Mortgage Corp. v. Miller, 71 Haw. 65, 71, 783 P.2d 855, 858 (1989) (stating that "[the supreme] court's jurisdiction is limited to review of issues within the parameters of the orders from which timely appeal is taken" (emphasis added)); see e.g., State v. Irvine, 88 Hawai'i 404, 405, 967 P.2d 236, 237 (1998) ("dismiss[ing an] appeal for lack of jurisdiction because the certification order and the notice of interlocutory appeal [were] untimely"); Oppenheimer v. AIG Hawai'i Ins. Co., 77 Hawai'i 88, 881 P.2d 1234 (1994) (appeal dismissed because notice of appeal was not filed within 30 days of order confirming arbitration award); Scott v. Liu, 46 Haw. 221, 377 P.2d 696 (1962) (reviewing court was without jurisdiction to hear appeal which was not taken within prescribed time), rehearing denied, 46 Haw. 289, 378 P.2d 880 (1963).

VII.

Based on the foregoing reasons, the prosecution's appeal should be dismissed.