

NO. 24609

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAII, Plaintiff-Appellee

vs.

PACIFIC WHALE FOUNDATION, INC., Defendant-Appellant

APPEAL FROM THE SECOND CIRCUIT COURT
(CR. NO. 00-1-0074(3))

ORDER DISMISSING APPEAL
(By: Moon, C.J., Levinson,
Nakayama, Ramil, and Acoba, JJ.)

Upon review of the record, it appears that the time for filing an interlocutory appeal from the order of the second circuit court, the Honorable Joseph Edward Cardoza presiding, denying Defendant-Appellant Pacific Whale Foundation's ("Pacific Whale") motion to dismiss in Criminal No. 00-1-0074(3) commenced upon entry of the August 1, 2001 order denying the motion to dismiss, and not upon entry of the September 18, 2001 findings of fact and conclusions of law relating to the August 1, 2001 order. The October 5, 2001 notice of appeal and the October 5, 2001 certification order were entered more than 30 days after entry of the August 1, 2001 order and were untimely. See HRAP 4(b); State v. Irvine, 88 Hawai'i 404, 406, 967 P.2d 236, 238 (1998) ("If a defendant in a criminal case seeks to take an interlocutory appeal from a circuit court order, it is necessary for the defendant to move for an order allowing the interlocutory appeal, for the circuit court to enter the certification order, and for

the defendant to file the notice of interlocutory appeal all within 30 days from the date the order appealed from is entered, unless the time for appeal is extended pursuant to HRAP 4(b).”).

Moreover, the October 5, 2001 certification order did not contain the findings and conclusions required by HRS § 641-17 (1993). See Irvine, 88 Hawai‘i at 406, 967 P.2d at 238 (When a party moves for an interlocutory appeal pursuant to HRS § 641-17 (1993), the circuit court must carefully consider the matter of whether it thinks an interlocutory appeal will more speedily determine the litigation and, if it so concludes, the circuit court must set forth, in the order allowing the appeal, its reasons for that conclusion.). Accordingly,

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

DATED: Honolulu, Hawai‘i, February 14, 2002.