

NO. 24818

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

FINAUGA TILI, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CR. NO. 00119174)

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that we do not have appellate jurisdiction over Defendant-Appellant Finauga Tili's (Appellant Tili) appeal from the November 7, 2001 order denying his "Motion to Set Aside Conviction and to Withdraw Plea of Guilty and to Dismiss with Prejudice" in CONA 25 of 11-7-2001 because Appellant Tili did not file his December 20, 2001 notice of appeal within thirty days after entry of the November 7, 2001 order, as HRS § 641-12 (1993) and Rule 4(b) of the Hawai'i Rules of Appellate Procedure (HRAP) require. Although Tili filed a motion for reconsideration of the November 7, 2001 order on November 15, 2001 in CONA 31 of 11-29-2001, "such a motion does not qualify under HRAP Rule 4(b) as a tolling motion that extends the filing deadline for a notice of appeal." State v. Naone, 92 Hawai'i 289, 300, 990 P.2d 1171, 1182 (App. 1999); State v. Brandimart, 68 Haw. 495, 497, 720 P.2d 1009, 1010 (1986) ("In the absence of an express statement to the contrary, we hold that the

motion for reconsideration is not a tolling motion.”). Neither of the two exceptions to the requirement for a timely filed notice of appeal apply because there is no judgment of conviction in this case. See State v. Irvine, 88 Hawai‘i 404, 407, 967 P.2d 236, 239 (1998) (“Our recognized exceptions involve circumstances where: (1) defense counsel has inexcusably or ineffectively failed to pursue a defendant’s appeal from a criminal conviction in the first instance[,] . . . or (2) the trial court’s decision was unannounced and no notice of the entry of judgment was ever provided[.]” (Citations omitted)).

Instead of entering a judgment of conviction against Appellant Tili, the district court dismissed Plaintiff-Appellee State of Hawaii’s (Appellee State) case after it found that Appellant Tili had complied with the conditions of the six-month deferred acceptance of his nolo contendere plea. Because the district court dismissed the Appellee State’s case against Appellant Tili, neither of the district court’s subsequent two orders aggrieved Appellant Tili. Therefore, even if the timeliness of this appeal were not at issue, Appellant Tili lacks standing to appeal the November 7, 2001 order denying his “Motion to Set Aside Conviction and to Withdraw Plea of Guilty and to Dismiss with Prejudice” and the November 29, 2001 order denying Appellant Tili’s motion for reconsideration. See, e.g., State v. Ui, 66 Haw. 366, 369-70, 663 P.2d 630, 632-33 (1983); State v.

Przeradski, 6 Haw. App. 20, 21, 709 P.2d 105, 107 (1985).

Accordingly,

IT IS HEREBY ORDERED that this appeal is dismissed.

DATED: Honolulu, Hawai'i, April 29, 2002.