

NO. 24979

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee

vs.

HAROLD JIM, Defendant-Appellant

APPEAL FROM THE THIRD CIRCUIT COURT
(CR. NO. 01-1-129)

ORDER DISMISSING APPEAL

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

Upon review of appellant's statement of jurisdiction and the record, it appears that judgment against appellant in Cr. No. 01-1-129 was entered on January 7, 2002. Notice of appeal from the judgment was filed by appellant on March 8, 2002, more than thirty days after entry of the judgment. Appellant was denied an extension of time to appeal and the March 8, 2002 notice of appeal is untimely. See HRS § 641-11; HRAP 4(b)(1). It was within the province of the circuit court to call and question probation officer Varize at the February 28, 2002 hearing on the motion for extension of time to appeal. See Rule 614, Hawai'i Rules of Evidence. It was also within the province of the circuit court to determine the credibility of Varize's testimony and we will not pass on issues dependent on the credibility of witnesses. See State v. Jenkins, 93 Hawai'i 87, 101, 997 P.2d 13, 27 (2000). Varize's testimony, which the circuit court found to be credible, established that appellant received notice of the judgment on January 17, 2002 and provides substantial evidence to support the circuit court's finding that appellant received notice of the judgment within the thirty-day period for appeal. The finding that appellant received timely notice of the judgment is not clearly erroneous and the denial of

an extension of time to appeal was not an abuse of discretion. Our recognized exceptions to untimely criminal appeals do not apply and thus, we lack jurisdiction over this appeal. See Grattafiori v. State, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995) ("[C]ompliance with the requirement of the timely filing of a notice of appeal is jurisdictional, and we must dismiss an appeal on our own motion if we lack jurisdiction."). Therefore,

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

DATED: Honolulu, Hawai'i, July 23, 2002.