

NO. 25111

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

GEORGE GARY PEABODY, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
(CASE NOS. CTR3-6, 8, 9: 5/16/00)

ORDER GRANTING MOTION FOR RECONSIDERATION
(By: Nakayama, J., for the court¹)

Upon consideration of Defendant-Appellant George Peabody's letter received on December 5, 2002 in which Appellant Peabody asks this court to reconsider the dismissal of the appeal, it appears that: (1) the district court appointed counsel to represent Appellant; (2) court-appointed counsel failed to file the opening brief thereby causing the dismissal of the appeal; and (3) this court has permitted appeals to continue when defense counsel in a defendant's direct appeal from a conviction fails to comply with procedural rules. See State v. Knight, 80 Hawai'i 318, 323-324, 909 P.2d 1133, 1138-1139 (1996) (a criminal defendant is entitled, on his first appeal, to effective counsel who may not deprive him of his appeal by failure to comply with procedural rules); State v. Erwin, 57 Haw. 288, 270, 554 P.2d 236, 238 (1976) (an indigent criminal defendant is entitled, on his first appeal, to court-appointed counsel who may not deprive him of an appeal by electing to forego compliance with procedural rules). Therefore,

¹Considered by: Moon, C.J., Levinson, Nakayama, Ramil, and Acoba, JJ.

IT IS HEREBY ORDERED that:

1. The motion for reconsideration is granted, and this appeal is reinstated.

2. The case is remanded to the District Court of the Second Circuit - Molokai District for appointment of new counsel.

3. Within thirty days from the date of this order, the district court shall enter an order appointing new counsel to represent Appellant on appeal.

4. Within five days after the order of appointment is filed, the clerk of the district court of the second circuit shall transmit the entire record, including the order appointing new counsel, to the clerk of the supreme court.

5. Appellant, through counsel, shall file the opening brief within forty days thereafter.

DATED: Honolulu, Hawai'i, December 17, 2002.

FOR THE COURT:

Associate Justice