

*** NOT FOR PUBLICATION ***

NO. 26193

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

MELVIN D. FREITAS, JR., Petitioner-Appellant

vs.

STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE FIRST CIRCUIT COURT
(S.P.P. NO. 02-1-0028)

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that the circuit court's August 28, 2003 order denying appellant's HRPP Rule 40 petition for post-conviction relief was appealable by notice of appeal filed within thirty days after the order was entered. See HRPP 40(h); HRAP 4(b)(1). Appellant's notice of appeal was filed on October 31, 2003, sixty-four days after entry of the August 28, 2003 order and is untimely. Thus, appellant does not claim that Setala v. J.C. Penney, 97 Hawai'i 484, 40 P.3d 886 (2002), applies. Our recognized exceptions to the requirement that notices of appeal be timely filed do not apply in this case and 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.").

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Therefore,

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

DATED: Honolulu, Hawai'i, February 20, 2004.