

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28002

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

ANTHONY LIMAS, Petitioner-Appellant,

v.

STATE OF HAWAI'I, Respondent-Appellee

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2006 SEP 21 AM 8:59

FILED

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(SPP NO. 05-1-0035(2))

ORDER DISMISSING APPEAL

(By: Burns, C.J., Watanabe and Lim, JJ.)

Upon review of the record, it appears that we do not have jurisdiction over Petitioner-Appellant Anthony M. Limas's (Appellant Limas) appeal from the Honorable Shackley F. Rafetto's June 1, 2006 "Order Denying Petitioner's Motion for the Court to Issue an Order of Final Separate Judgment." Rule 40(h) of the Hawai'i Rules of Penal Procedure (HRPP) authorizes a timely appeal from an order that disposes of a petition for post-conviction relief pursuant to HRPP Rule 40, such as the January 4, 2006 "Findings of Fact, Conclusions of Law, and Judgment Denying Petitioner's Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody" pursuant to HRPP Rule 40. However, Appellant Limas's prior appeal, in case number 27828, from the January 4, 2006 order was not timely. HRPP Rule 40(h) does not authorize an appeal from an order that

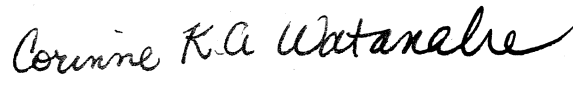
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is not case-dispositive, such as the June 1, 2006 "Order Denying Petitioner's Motion for the Court to Issue an Order of Final Separate Judgment." Therefore, we do not have jurisdiction over Appellant Limas's instant appeal from the June 1, 2006 "Order Denying Petitioner's Motion for the Court to Issue an Order of Final Separate Judgment." Accordingly,

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

DATED: Honolulu, Hawai'i, September 21, 2006.


Chief Judge


Associate Judge


Associate Judge