

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28025

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

CHRIS GRINDLING, Petitioner-Appellant, v  
STATE OF HAWAI'I, Respondent-Appellee

K. HAMAKADO  
CLERK, APPELLATE COURTS  
STATE OF HAWAI'I

2006 NOV 13 AM 8:18

FILED

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT  
(S.P.P. NO. 05-1-0027(2))

ORDER DISMISSING APPEAL

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

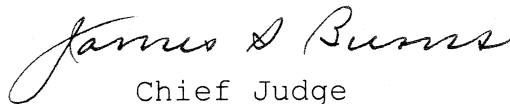
Upon review of the record, it appears that we do not have jurisdiction over Petitioner-Appellant Chris Grindling's (Appellant Grindling) appeal from the Honorable Shackley F. Rafetto's June 13, 2006 "Order Denying Petitioner's Motion for a Hearing Date." Rule 40(h) of the Hawai'i Rules of Penal Procedure (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 December 21, 2005 "Findings of Fact, Conclusions of Law, and Order Denying Petitioner's Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody" pursuant to HRPP Rule 40. However, Appellant Grindling did not file his June 26, 2006 notice of appeal within thirty days after entry of the December 21, 2005 order denying Appellant Grindling's HRPP Rule 40 petition, as Rule 4(b)(1) of the Hawai'i Rules of Appellate Procedure requires. HRPP Rule 40(h) does not authorize an appeal from an order that is not

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case-dispositive, such as the June 13, 2006 "Order Denying Petitioner's Motion for Hearing Date." Therefore, we do not have jurisdiction over Appellant Grindlings's instant appeal from the June 13, 2006 "Order Denying Petitioner's Motion for Hearing Date." Accordingly,

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

DATED: Honolulu, Hawai'i, November 13, 2006.

  
Chief Judge

  
Associate Judge

  
Associate Judge