

LAW LIBRARY

NO. 28133

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

E.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2006 NOV 30 PM 12:41

FILED

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
WALTER WAYNE DEGUAIR, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CR. NO. 92-0509)

ORDER GRANTING MOTION TO DISMISS APPEAL
(By: Burns, C.J., Lim and Foley, JJ.)

Upon review of Plaintiff-Appellee State of Hawaii's (Appellee State) November 21, 2006 motion to dismiss Defendant-Appellant Walter Wayne De Guair's (Appellant De Guair) appeal, and the record, it appears that we lack jurisdiction over Appellant De Guair's appeal from the Honorable Greg K. Nakamura's August 7, 2006 "Order Denying Defendant Walter DeGuair's Motion for Correction of a Clerical Error in a Sentence," because the August 7, 2006 order is not an appealable order.

"In a circuit court criminal case, a defendant may appeal from the judgment of the circuit court, see Hawaii Revised Statutes (HRS) § 641-11 (1993), from a certified interlocutory order, see HRS § 641-17 (1993), or from an interlocutory order denying a motion to dismiss based on double jeopardy." State v. Kealaiki, 95 Hawai'i 309, 312, 22 P.3d 588, 591 (2001) (citation omitted). Furthermore, the Supreme Court of Hawai'i has allowed defendants to appeal from orders that denied motions to correct

or reduce sentences pursuant to Rule 35 of the Hawai'i Rules of Penal Procedure (HRPP) and orders that denied petitions for post-conviction relief pursuant to HRPP Rule 40. See, e.g., State v. Guillermo, 91 Hawai'i 307, 308, 983 P.2d 819, 820 (1999)

(reviewing a defendant's appeal "from the circuit court's denial of his motion for re-sentencing filed . . . pursuant to [HRPP] Rule 35"); Grattafiori v. State, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995) (acknowledging the appealability of an order denying an HRPP Rule 40 petition for post-conviction relief).

The August 7, 2006 does not fit into any of these categories of appealable judgments and orders. Absent statutory authority for an appeal, we lack jurisdiction over the appeal. See, e.g., State v. Johnston, 63 Haw. 9, 11, 619 P.2d 1076, 1077 (1980)

(dismissing a defendant's appeal from an order denying the defendant's motion to dismiss an indictment, because "such an order is interlocutory and is not a final order or judgment").

Therefore,

IT IS HEREBY ORDERED that Appellee State's November 21, 2006 motion is granted, and this appeal is dismissed for lack of appellate jurisdiction.

Dated: Honolulu, Hawai'i, November 30, 2006.


Chief Judge


Associate Judge


Associate Judge