

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28281 and 28282

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

No. 28281

STATE OF HAWAI'I, Plaintiff-Appellant,
v.
RANDY KAAUMOANA KAHALE, Defendant-Appellee

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

2007 FEB 15 AM 8:42

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 01-1-1899)

No. 28282

STATE OF HAWAI'I, Plaintiff-Appellant,
v.
RANDY K. KAHALE, Defendant-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 04-1-0313)

ORDER DISMISSING APPEAL

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

Upon review of (1) the February 2, 2006 order consolidating appellate court case numbers 28281 and 28282 under appellate court case number 28281, and (2) the record, it appears that we do not have jurisdiction over the consolidated appeals by Plaintiff-Appellant State of Hawai'i (Appellant State) from the two October 26, 2006 order denying Appellant State's motion to correct an illegal sentence pursuant to Rule 35 of the Hawai'i Rules of Penal Procedure (HRPP) that the circuit court filed in Criminal No. 01-1-1899 and Criminal No. 04-1-0313. "The

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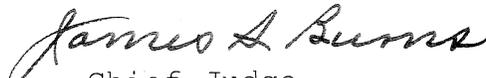
Prosecution's right of appeal in criminal cases is limited to those instances set forth in HRS § 641-13." State v. Fukusaku, 85 Hawai'i 462, 490, 946 P.2d 32, 60 (1997) (citations, internal quotation marks, and brackets omitted). The supreme court has acknowledged "that the plain language of [HRS] § 641-13(6) allows an appeal from an illegal sentence - a sentence which the court is not authorized to impose[.]" State v. Kahalewai, 71 Haw. 624, 626, 801 P.2d 558, 560 (1990). Nevertheless, the language of HRS § 641-13(6) (1993) "must be strictly construed and . . . cannot be extended beyond the plain meaning of the terms found therein." State v. Kahalewai, 71 Haw. at 626, 801 P.2d at 560 (citations and internal quotation marks omitted). Thus, HRS § 641-13(6) (Supp. 2006) would authorize Appellant State to appeal from an order granting a motion to correct a sentence pursuant to HRPP Rule 35, because such an order constitutes a new "sentence" that is appealable as an allegedly illegal sentence pursuant to HRS § 641-13(6) (Supp. 2006). See, e.g., State v. Williams, 70 Haw. 566, 777 P.2d 1192 (1989). However, Appellant State appealed from the two respective October 26, 2006 orders that denied Appellant State's two motions to correct an illegal sentence pursuant to HRPP Rule 35 in Criminal No. 01-1-1899 and Criminal No. 04-1-0313. No new sentences resulted from the two October 26, 2006 orders in these two cases. Under these circumstances, the two October 26, 2006 orders are not appealable orders pursuant to HRS § 641-13(6) (Supp. 2006).

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Appellant State's two respective November 22, 2006 notices of appeal in Criminal No. 01-1-1899 and Criminal No. 04-1-0313 fail as appeals from the June 5, 2006 judgment of conviction in Criminal No. 01-1-1899 and the June 29, 2006 second amended judgment of conviction in Criminal No. 04-1-0313, because Appellant State did not file either of the two November 22, 2006 notices of appeal within thirty days after entry of the June 5, 2006 judgment of conviction and the June 29, 2006 second amended judgment of conviction, as Rule 4(b)(1) of the Hawai'i Rules of Appellate Procedure (HRAP) required. Therefore, we lack jurisdiction over these consolidated appeals by Appellant State. Accordingly,

IT IS HEREBY ORDERED that Appellant State's consolidated appeals (appellate court case numbers 28281 and 28282) in appellate court case number 28281 are dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, February 15, 2007.


Chief Judge


Associate Judge


Associate Judge