

NO. 28307

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

STATE OF HAWAI'I, Plaintiff-Appellee,  
v.  
MICHAEL A. PESTANA, Defendant-Appellant

EMERSON RIMANDO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2007 AUG 31 PM 2:39

FILED

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT  
(CR. NO. 06-1-0126K)

ORDER DISMISSING APPEAL

(By: Recktenwald, Presiding Judge, Watanabe, and Nakamura, JJ.)

Upon consideration of Defendant-Appellant Michael Pestana's declaration in support of stipulation for dismissal of appeal, the papers in support, and the records and files herein, it appears that: (1) on December 8, 2006, Appellant filed a notice of appeal from a judgment of conviction; (2) on May 18, 2007, Appellant submitted a stipulation to dismiss the appeal, and although the stipulation was signed by defense counsel, the prosecutor, and Appellant, the stipulation was not accompanied by a declaration of Appellant indicating a knowing and intelligent understanding of the consequences of the dismissal and that the withdrawal of the appeal was voluntary as required by HRAP Rule 42(c); (3) on May 21, 2007, the court disapproved the stipulation without prejudice to a subsequent stipulation that included the required declaration; (4) on August 3, 2007, Appellant submitted a declaration in support of stipulation for dismissal; (5) in the declaration, Appellant states he discussed the matter with his attorney, he signed the stipulation in open court after being fully advised of the consequences and effect of agreeing to

dismiss his appeal, he understands the consequences of dismissing his appeal, and he freely and voluntarily seeks dismissal of his appeal; and (6) Appellant's declaration satisfies the requirements of HRAP Rule 42(c). Therefore,

IT IS HEREBY ORDERED that the appeal is dismissed.

DATED: Honolulu, Hawai'i, August 31, 2007.

*Mark E. Redmond*

Chief Judge

*Caroline Ka Watanabe*

Associate Judge

*Craig H. Nakamura*

Associate Judge