

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 28379

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.  
TOM LAOMAHEI, aka TOMU LAOMAHEI  
and JOHN MAHE, Defendant-Appellant

KHAMAKADO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2007 APR 10 AM 7:45

FILED

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT  
(Cr. No. 05-1-271K)

ORDER DISMISSING APPEAL

(By: Watanabe, Presiding J., Lim, and Foley, JJ.)

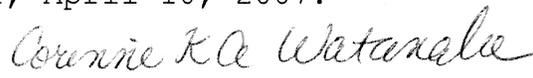
Upon review of the record, it appears that we lack jurisdiction over Defendant-Appellant Tom Laomahei, aka Tomu Laomahei and John Mahe's (Appellant Laomahei) appeal from the Honorable Elizabeth A. Strance's December 18, 2006 "Order Denying Defendant's Motion to Correct or Reduce Sentence" (the Post-Judgment Order) because Appellant Laomahei's appeal is not timely under Rule 4(b)(1) of the Hawai'i Rules of Appellate Procedure (HRAP).

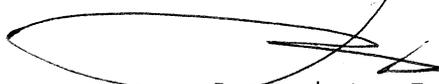
Appellant Laomahei did not file his January 18, 2007 notice of appeal within thirty days after entry of the Post-Judgment Order, as HRAP Rule 4(b)(1) required. In criminal cases, "compliance with the requirement of the timely filing of a notice of appeal, as set forth in HRAP Rule 4(b)(1), is jurisdictional." State v. Bohannon, 102 Hawai'i 228, 234, 74 P.3d 980, 986 (2003) (citation, internal quotation marks, and

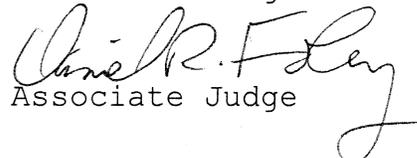
original brackets omitted). Granted, "[i]n criminal cases, [the Supreme Court of Hawai'i] ha[s] made exceptions to the requirement that notices of appeal be timely filed." State v. Irvine, 88 Hawai'i 404, 407, 967 P.2d 236, 239 (1998). The recognized exceptions include "circumstances where: (1) defense counsel has inexcusably or ineffectively failed to pursue a defendant's appeal from a criminal conviction in the first instance[,] or (2) the trial court's decision was unannounced and no notice of the entry of judgment was ever provided[.]" Id. (citations omitted). Nevertheless, (1) Appellant Laomahei is not appealing from his criminal conviction in the first instance, and (2) the record shows he had notice that the Circuit Court of the Third Circuit intended to enter the Post-Judgment Order. Therefore, the two exceptions to the requirement for a timely notice of appeal do not apply to this case. Because Appellant Laomahei's appeal is not timely, we lack jurisdiction over this appeal. Accordingly,

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

DATED: Honolulu, Hawai'i, April 10, 2007.

  
Presiding Judge

  
Associate Judge

  
Associate Judge