

NO. 26942

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
CHESTER DENOON, Defendant-Appellant.

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CR. NO. 03-1-0082)

E.M. RIMANDO
CLERK, APPELLATE COURT
STATE OF HAWAII

2008 NOV 13 AM 9:39

FILED

ORDER

(By: Watanabe, Presiding Judge, Fujise and Leonard, JJ.)

Upon consideration of Defendant-Appellant's Motion to Rescind and Reissue Intermediate Court of Appeals' October 24, 2008 Order Granting Motion to Dismiss Appeal as Moot, the papers in support, and the records and files herein, this court finds that:

(1) On October 1, 2008, this court issued an Order to Show Cause noting that Defendant-Appellant Chester DeNoon's term of probation had ended and directing the parties to show cause why this case should not be dismissed as moot;

(2) the Order to Show Cause was not a motion to dismiss the appeal as moot; and

(3) on October 13, 2008, Defendant-Appellant Chester DeNoon filed a document entitled "Defendant-Appellant's Response to Intermediate Court of Appeals' Order to Show Cause and Sua Sponte Motion to Dismiss Appeal as Moot." (Emphasis added.)

Inasmuch as this court's October 1, 2008 Order to Show Cause was not a motion to dismiss the appeal as moot, and DeNoon, in his response, acknowledged that his term of probation had ended and that the court could grant no further relief, it appeared to this court that DeNoon was moving to dismiss his appeal as moot. See AIG Hawaii v. Bateman, 82 Hawai'i, 453, 923 P.2d 395 (1996) (the parties have a duty to disclose facts that may render an appeal moot). Consequently, the court issued an order stating that DeNoon was moving to dismiss his appeal as moot, granted the motion, and dismissed the appeal.

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

In the instant motion, DeNoon clarifies that he was not moving to dismiss his appeal as moot in the October 13, 2008 document. He again acknowledges, however, that his term of probation has expired, the court can grant no further relief, and he acquiesces in dismissal of the appeal as moot. Therefore,

IT IS HEREBY ORDERED that the motion to rescind and reissue the October 24, 2008 order is denied.

IT IS FURTHER ORDERED that the October 24, 2008 order is amended as follows:

1. The title of the order is amended by deleting the words "GRANTING MOTION TO DISMISS APPEAL" and substituting "DISMISSING" for the deleted words so that the title reads: "ORDER DISMISSING APPEAL AS MOOT."

2. In lines 9 and 10 of the order, the following words are deleted: "(3) DeNoon now moves to dismiss the appeal as moot,"

3. In line 10, the numeral "4" enclosed in parentheses is deleted and replaced with the numeral "3".

4. The second paragraph is amended to delete the words "DeNoon's motion to dismiss his appeal as moot is granted, and" so that the paragraph reads: "IT IS HEREBY ORDERED that this appeal is dismissed."

5. The clerk of the court shall incorporate the above changes to the original October 24, 2008 order and shall serve the parties with a copy of the order, as amended.

DATED: Honolulu, Hawai'i, November 13, 2008.

Corinne K A Watanabe
Presiding Judge

Alicia O Su Fujin
Associate Judge

[Signature]
Associate Judge

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STATE OF HAWAI'I, Plaintiff-Appellee, v.
CHESTER DENOON, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(Cr. No. 03-1-0082)

ENLARGING
CLERK APPELLATE COURTS
STATE OF HAWAII

2008 OCT 24 AM 8:31

FILED

*SEE *emw*
ORDER
FILED
11/13/08

**DISMISSING APPEAL emw*
~~ORDER GRANTING MOTION TO DISMISS APPEAL AS MOOT~~
(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon consideration of: (1) Defendant-Appellant Chester DeNoon's (DeNoon) Response to the Intermediate Court of Appeals' Order to Show Cause and Sua Sponte Motion to Dismiss Appeal as Moot filed on October 13, 2008; (2) Plaintiff-Appellee State of Hawai'i's Response to Order to Show Cause Issued October 1, 2008 filed on October 16, 2008; and (3) the records and files herein, it appears that: (1) in his appeal, DeNoon is challenging Special Condition 7 of his term of probation; (2) DeNoon's probation expired on July 27, 2008; *emw** (3) ~~DeNoon now moves to dismiss the~~ **3 emw* ~~appeal as moot,~~ and (4) the State has no objection.

*SEE *emw*
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ORDER
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Therefore,

IT IS HEREBY ORDERED that *emw** ~~DeNoon's motion to dismiss~~ ~~his appeal as moot is granted,~~ and this appeal is dismissed.

*SEE *emw*
ORDER
FILED
11/13/08

DATED: Honolulu, Hawai'i, October 24, 2008.

Corinne K.A. Watanabe
Presiding Judge

Quana Odu Fujim
Associate Judge

[Signature]
Associate Judge

ATTENTION
PLEASE NOTE CHANGES