

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28837

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

v.

CHRIS GRINDLING, Defendant-Appellant.

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

2008 FEB 29 AM 8:13

FILED

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CR. NO. 07-1-0533)ORDER DISMISSING APPEAL FOR LACK OF JURISDICTION
(By: Recktenwald, C.J., Watanabe and Nakamura, JJ.)

Upon consideration of the record it appears that:

(1) on November 6, 2007, Defendant-Appellant Chris Grindling (Mr. Grindling) filed a notice of appeal from rulings entered in State v. Grindling, Cr. No. 07-1-0533(2), which is pending in the Circuit Court of the Second Circuit (circuit court); (2) Mr. Grindling is represented by counsel in the pending circuit court proceedings; (3) "[t]he right to appeal in a criminal case is purely statutory and exists only when given by some constitutional or statutory provision," Grattafiori v. State, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995) (citing State v. Dannenberg, 74 Haw. 75, 78, 837 P.2d 776, 778 (1992)); (4) in circuit court criminal proceedings, the right to appeal is governed by HRS § 641-11 (Supp. 2007), which provides that:

Any party aggrieved by the judgment of a circuit court in a criminal matter may appeal to the intermediate appellate court, subject to chapter 602, in the manner and within the time provided by the rules of the court. The sentence of the court in a criminal case shall be the judgment.

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(5) the statute is clear, and Mr. Grindling can appeal only from a judgment, which in a criminal case is the sentence; (6) in this matter, the criminal case is still pending in the circuit court, and there is no sentence of the circuit court; and (7) thus, this court lacks jurisdiction over this appeal. See State v. Johnson, 63 Haw. 9, 619 P.2d 1076 (1980) (unless an appeal taken pursuant to HRS § 641-11 is from a final judgment or sentence, the appeal must be dismissed by the appellate court for lack of jurisdiction, and such a jurisdictional defect cannot be waived by the parties or disregarded by the appellate court).

Therefore,

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

DATED: Honolulu, Hawai'i, February 29, 2008.

Mum Redmond

Chief Judge

Brunie KA Watanabe

Associate Judge

Cig H Nakamura

Associate Judge