

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29294

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

CR. NO. 07-1-1665

STATE OF HAWAII, Plaintiff-Appellee, v.
MIRELLA MAESTRINI DAVIES, Defendant-Appellant

and

CR. NO. 07-1-1762

STATE OF HAWAII, Plaintiff-Appellee, v.
MIRELLA MAESTRINI DAVIES, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT

ORDER DISMISSING APPEAL
FOR LACK OF JURISDICTION

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

Upon review of the record for this consolidated case, it appears that we lack jurisdiction over Defendant-Appellant Mirella Maestrini Davies's (Appellant Davies) appeal from the Honorable Reynaldo Graulty's June 20, 2008 "Order Granting Defendant's Motion for Interlocutory Appeal and to Continue" (the June 20, 2008 order denying motions to dismiss and granting leave to file an interlocutory appeal), because Appellant Davies's appeal is not timely under Rule 4(b)(1) of the Hawaii Rules of Appellate Procedure (HRAP).

Appellant Davies is appealing from the interlocutory June 20, 2008 order denying motions to dismiss and granting leave to file an interlocutory appeal pursuant to Hawaii Revised Statutes (HRS) HRS § 641-17 (Supp. 2007), which authorizes interlocutory appeals:

§ 641-17. Interlocutory appeals from circuit courts,
criminal matters

Upon application made within the time provided by the rules of court, an appeal in a criminal matter may be allowed to a defendant from the circuit court to the

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intermediate appellate court, subject to chapter 602, from a decision denying a motion to dismiss or from other interlocutory orders, decisions, or judgments, whenever the judge in the judge's discretion may think the same advisable for a more speedy termination of the case. The refusal of the judge to allow an interlocutory appeal to the appellate court shall not be reviewable by any other court.

HRS § 641-17 (Supp. 2007) (emphases added). Pursuant to HRAP Rule 4(b)(1),

[i]f a defendant in a criminal case seeks to take an interlocutory appeal from a circuit court order, it is necessary for the defendant to move for an order allowing the interlocutory appeal, for the circuit court to enter the certification order, and for the defendant to file the notice of interlocutory appeal all within 30 days from the date the order appealed from is entered, unless the time for appeal is extended pursuant to HRAP [Rule] 4(b).

State v. Irvine, 88 Hawai'i 404, 406, 967 P.2d 236, 238 (1998).

Appellant Davies did not file her August 6, 2008 notice of appeal within thirty days after entry of the June 20, 2008 order denying motions to dismiss and granting leave to file an interlocutory appeal, as HRAP Rule 4(b)(1) requires. The circuit court did not expressly extend the time period for filing a notice of appeal pursuant to HRAP Rule 4(b)(5). Therefore, Appellant Davies's appeal is untimely.

"In criminal cases, [the supreme court] ha[s] made exceptions to the requirement that notices of appeal be timely filed." State v. Irvine, 88 Hawai'i at 407, 967 P.2d at 239.

The "recognized exceptions involve 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, Appellant Davies does not qualify for either of these two possible exceptions, because (1) the circuit court has not entered a

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judgment of conviction against Appellant Davies, and (2) the record shows that the circuit court provided the parties with notice of the June 20, 2008 order denying motions to dismiss and granting leave to file an interlocutory appeal.

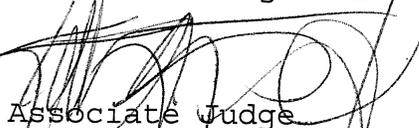
"[C]ompliance with the requirement of the timely filing of a notice of appeal, as set forth in HRAP Rule 4(b)(1), is jurisdictional." State v. Bohannon, 102 Hawai'i 228, 234, 74 P.3d 980, 986 (2003) (citation, internal quotation marks, and original brackets omitted). When a party fails to file a timely interlocutory appeal pursuant to HRS § 641-17 (Supp. 2007), appellate jurisdiction fails to exist. State v. Irvine, 88 Hawai'i at 407, 967 P.2d at 239. Therefore, we lack appellate jurisdiction and this untimely appeal must be dismissed. Accordingly,

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

DATED: Honolulu, Hawai'i, November 28, 2008.


Daniel R. Foley
Presiding Judge


Associate Judge


Associate Judge