

NO. 28539

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
ATMARAMA D. DIAZ, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(Case Nos. 1P104-11530 and 1P105-18336)

ORDER DISMISSING APPEAL
FOR LACK OF APPELLATE JURISDICTION
(By: Watanabe, Presiding J., Foley, and Fujise, JJ.)

Upon review of the record, it appears that we lack jurisdiction over the appeal that Defendant-Appellant Atmarama D. Diaz (Diaz) has asserted from the March 16, 2007 "Findings of Fact and Conclusions of Law; and Order" denying Diaz's motion to set aside his bail forfeiture (FOF/COL/Order) entered by the District Court of the First Circuit¹ (district court) because, under the circumstances of this case, the FOF/COL/Order is not an appealable order under Hawaii Revised Statutes (HRS) § 804-51 (Supp. 2008).

"The right to an appeal is strictly statutory." State v. Ontiveros, 82 Hawai'i 446, 449, 923 P.2d 388, 391 (1996) (citation omitted). A proceeding involving the "forfeiture of a bond is a civil proceeding." State v. Camara, 81 Hawai'i 324, 329 n.7, 916 P.2d 1225, 1230 n.7 (1996) (citation omitted). The supreme court has explained that the statute authorizing an appeal from a bail-bond forfeiture proceeding is HRS § 804-51 (Supp. 2008), and

¹ The Honorable Gerald H. Kibe presided.

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the appealable event is the order denying the motion to set aside the judgment of forfeiture.

Once a motion to set aside is denied, the surety may appeal such denial "as in the case of a final judgment." Pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 4(a)(1), a notice of appeal from a final judgment must be filed within thirty days from the date of entry of the judgment--in this case, thirty days from the order denying the motion to set aside.

Camara, 81 Hawai'i at 329, 916 P.2d at 1230 (footnote omitted).

Thus, in the instant case, the FOF/COL/Order denying Diaz's motion to set aside bail forfeiture might appear to be an appealable order pursuant to HRS § 804-51.

Nevertheless, it also appears that a prerequisite to a motion to set aside a bail forfeiture is the entry of a judgment on the bail forfeiture. HRS § 804-51 provides, in pertinent part:

Whenever the court, in any criminal cause, forfeits any bond or recognizance given in a criminal cause, the court shall immediately enter up judgment in favor of the State and against the principal or principals and surety or sureties on the bond, jointly and severally, for the full amount of the penalty thereof[.]"

HRS § 804-51 (emphasis added). Indeed, the supreme court has expressly

recognize[d] that HRS §§ 804-1, -7.4(2), -17, and -51, read in pari materia, mandate that, upon a defendant's unexcused failure to appear for a court proceeding, (1) the defendant's "default shall be entered," (2) the default "shall be evidence of the breach of an appearance bond," and (3) *if* the defendant's bail bond is forfeited, "the court shall immediately" enter a forfeiture judgment in favor of the State and against the defendant and his or her surety.

State v. Ranger Insurance Co., 83 Hawai'i 118, 122, 925 P.2d 288, 292 (1996) (citations and some brackets omitted; underscored emphases added). After a court has filed a bail-forfeiture judgment, then "before the expiration of thirty days from the date that notice is given to the surety or sureties on the bond

of the entry of the judgment in favor of the State," the "principal" may file "a motion or application . . . showing good cause why execution should not issue upon the judgment[.]" HRS § 804-51. However, the record on appeal in this case does not contain a written judgment in favor of Plaintiff-Appellee State of Hawai'i (State) and against Diaz on the forfeiture of Diaz's bail bond. Under analogous situations in civil cases involving motions to set aside final orders or judgments, Hawai'i courts have noted that "a motion for reconsideration pursuant to HRCPC Rule 60(b), is authorized only in situations involving final judgments." Cho v. State, 115 Hawai'i 373, 382, 168 P.3d 17, 26 (2007) (internal quotation marks omitted). Similarly, under HRS § 804-51, a motion to set aside a bail-forfeiture judgment is authorized only in situations where the trial court has entered a bail-forfeiture judgment. Absent a bail-forfeiture judgment, HRS § 804-51 (Supp. 2008) does not authorize a motion to set aside a bail-forfeiture judgment. Although the district court, in its FOF/COL/Order, refers to an August 9, 2004 district court judgment in the form of a "disposition slip" requiring the forfeiture of his bail, the record on appeal does not contain any such judgment. Absent a bail-forfeiture judgment, Diaz did not have the right to file a motion to set aside the judgment on the bail forfeiture, and, thus, the FOF/COL/Order denying Diaz's motion to set aside bail forfeiture is not an appealable order under HRS § 804-51.

Absent an appealable order or judgment, we lack appellate jurisdiction. Accordingly,

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

IT IS HEREBY ORDERED that appellate court case
No. 28539 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, October 13, 2009.

Corinne K. A. Watanabe
Presiding Judge

Daniel R. Foley
Associate Judge

Aewa D. J. Frijne
Associate Judge