

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29395

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
JOSE E. CELIS, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(HPD NO. 1DTI-07-169259)

K. HAMAKAHO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2009 FEB 11 AM 9:52

FILED

AMENDED ORDER DISMISSING APPEAL

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

Upon review of the February 4, 2009 order dismissing this appeal, it appears that the February 4, 2009 order contained a clerical error regarding the date of the judgment. Therefore, this amended order dismissing this appeal supercedes the February 4, 2009 order dismissing this appeal.

Upon review of the record, it appears that we do not have jurisdiction over Defendant-Appellant Jose E. Celis's (Appellant Celis) appeal from the September 3, 2008 judgment against Appellant Celis for noncompliance with the speed limit in violation of Hawaii Revised Statutes (HRS) § 291C-102 (2007).

An appellate court has an independent obligation to ensure jurisdiction over each case and to dismiss the appeal sua sponte if a jurisdictional defect exists. State v. Graybeard, 93 Hawai'i 513, 516, 6 P.3d 385, 388 (App. 2000).

"Appeals from the district court, in criminal cases, are authorized by HRS § 641-12, which . . . provides in pertinent part that appeals upon the record shall be allowed from all final decisions and final judgments of district courts in all criminal matters." State v. Ontiveros, 82 Hawai'i 446, 449, 923 P.2d 388,

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391 (1996) (internal quotation marks and brackets omitted). Noncompliance with the speed limit in violation of HRS § 291C-102 (2007) is punishable by only a fine, and, thus, this offense constitutes a "'[t]raffic infraction' . . . for which the prescribed penalties do not include imprisonment[.]" HRS § 291D-2 (2007) (emphasis added). "No Traffic infraction shall be classified as a criminal offense." HRS § 291D-3(a) (2007). Nevertheless, under HRS Chapter 291D, contested traffic citations are adjudicated at a hearing before a district court. An adjudication in favor of Plaintiff-Appellee State of Hawai'i may be followed by a trial de novo before the district court that the district court conducts "pursuant to the Hawaii rules of evidence and the rules of the district court[.]" HRS § 291D-13(a) (2007). Rule 19(d) of the Hawai'i Civil Traffic Rules (HCTR) provides that "[a]ppeals from judgments entered after a trial may be taken in the manner provided for appeals from district court civil judgments." HCTR Rule 19(d) (emphasis added). Appeals from district court civil judgments are authorized by HRS § 641-1(a) (1993 & Supp. 2007).

Pursuant to HRS § 641-1(a) (1993), appeals are allowed in civil matters from all final judgments, orders, or decrees of circuit and district courts. In district court cases, a judgment includes any order from which an appeal lies. A final order means an order ending the proceeding, leaving nothing further to be accomplished. When a written judgment, order, or decree ends the litigation by fully deciding all rights and liabilities of all parties, leaving nothing further to be adjudicated, the judgment, order, or decree is final and appealable.

Casumpang v. ILWU, Local 142, 91 Hawai'i 425, 426, 984 P.2d 1251, 1252 (1999) (citations, internal quotation marks, and footnote omitted).

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The September 3, 2008 judgment ended the proceeding for Appellant Celis's citation for noncompliance with the speed limit in violation of HRS § 291C-102, leaving nothing further to be accomplished. Therefore, the September 3, 2008 judgment is an appealable final judgment under HRS § 641-1(a.)

However, Appellant Celis's appeal from the September 3, 2008 judgment is not timely, because Appellant Celis did not file his October 6, 2008 notice of appeal within thirty days after entry of the September 3, 2008 judgment, as Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure required. "As a general rule, compliance with the requirement of the timely filing of a notice of appeal is jurisdictional, . . . and we must dismiss an appeal . . . if we lack jurisdiction." Grattafiori v. State, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995) (citations, internal quotation marks, and original brackets omitted). "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 404, 407, 967 P.2d 236, 239 (1998). 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). Neither of these exceptions apply to Appellant Celis, and we lack jurisdiction over this untimely appeal. Therefore,

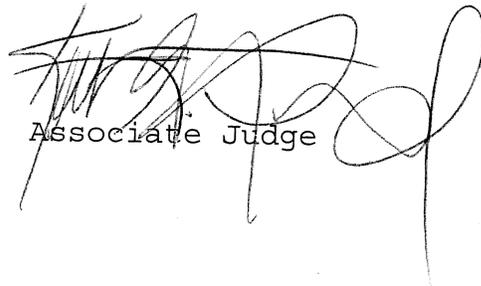
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IT IS HEREBY ORDERED that this appeal is dismissed.

DATED: Honolulu, Hawai'i, February 11, 2009.


Daniel R. Foley
Presiding Judge


Auna Oka Juijn
Associate Judge


Associate Judge