

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29409

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII,
Plaintiff-Appellee,

v.

WENDELL IGNACIO,
Defendant-Appellant

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

2009 FEB 17 AM 10:42

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 06-1-0895)

ORDER DISMISSING APPEAL FOR
LACK OF APPELLATE JURISDICTION

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

Upon review of the record, it appears that we lack jurisdiction over the interlocutory appeal that Defendant-Appellant Wendell Ignacio (Appellant Ignacio) has asserted from the Honorable Reynaldo Grauly's September 30, 2008 "Order Granting Defendant's Motion for Permission to File Interlocutory Appeal" (the September 30, 2008 interlocutory appeal certification order), because there is no appealable written interlocutory order in the record on appeal for this criminal case.

"The right to an appeal is strictly statutory." State v. Ontiveros, 82 Hawai'i 446, 449, 923 P.2d 388, 391 (1996) (citation omitted). "Any party deeming oneself 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." HRS § 641-11 (Supp. 2007). This case is criminal matter, but

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

"[t]he sentence of the court in a criminal case shall be the judgment." HRS § 641-11 (Supp. 2007). The circuit court has not yet entered any sentence against Appellant Ignacio, and, thus, HRS § 641-11 (Supp. 2007) does not authorize an appeal at this time. Consequently, Appellant Ignacio has attempted to assert an interlocutory appeal from the September 30, 2008 interlocutory appeal certification order pursuant to HRS § 641-17 (Supp. 2007), which provides:

§ 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 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). The plain language of HRS § 641-17 (Supp. 2007) authorizes an interlocutory appeal from "orders[.]" HRS § 641-17 (Supp. 2007). "Moreover, HRAP Rule 4(b) - which, by its plain language, makes no distinction between proceedings in the district or circuit courts - requires that a final and appealable judgment or order in criminal cases be in written form." State v. Bohannon, 102 Hawai'i 228, 235, 74 P.3d 980, 987 (2003) (citation omitted). The September 30, 2008 interlocutory appeal certification order merely grants permission to assert an interlocutory appeal, and, thus, it is not the type of interlocutory order for which HRS § 641-17 (Supp. 2007) authorizes an appeal. Appellant Ignacio seeks appellate review from some other order. However, September 30, 2008 interlocutory

appeal certification order does not specifically identify the order that the circuit court was attempting to certify for interlocutory appeal pursuant to HRS § 641-17 (Supp. 2007). Based on Appellant Ignacio's antecedent September 12, 2008 motion for permission to file an interlocutory appeal pursuant to HRS § 641-17 (Supp. 2007), it appears that Appellant Ignacio desires to appeal from a July 10, 2008 letter through which Chief Adjudicator Ronald K. Sakata denied Appellant Ignacio's request for a new administrative hearing for the revocation of Appellant Ignacio's driver's license, or, in the alternative, an amendment to the revocation period. However, Chief Adjudicator Ronald K. Sakata's July 10, 2008 letter regarding the separate administrative proceeding is not an "order" that the circuit court entered in this criminal case.¹ The record on appeal for this criminal case does not contain any appealable, written interlocutory order that the circuit court has issued in this criminal case.

Absent an appealable interlocutory order, we lack jurisdiction over this interlocutory appeal. Therefore,

¹ Even assuming, arguendo, that Chief Adjudicator Ronald K. Sakata's July 10, 2008 letter was an "order", Appellant Ignacio did not file his October 14, 2008 notice of appeal within thirty days after entry of the Chief Adjudicator Ronald K. Sakata's July 10, 2008 letter, as Rule 4(b)(1) requires for an appeal from an appealable order, and, thus, Appellant Ignacio's appeal would not be timely. See, e.g., State v. Irvine, 88 Hawai'i 404, 406, 967 P.2d 236, 238 (1998) ("If 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).").

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

IT IS HEREBY ORDERED that this appeal in appellate court case number 29409 is dismissed for lack of jurisdiction.

DATED: Honolulu, Hawai'i, February 17, 2009.

Corinne K.A. Watanahe

Presiding Judge

Charles R. Foley

Associate Judge

Auna Ota Fijini

Associate Judge