

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29511

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAIICASEY C. EASON, Petitioner-Appellant, v.
HAWAII PAROLING AUTHORITY, Respondent-AppelleeAPPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(S.P.P. NO. 08-1-0002K; CR. NO. 03-1-97)ORDER DISMISSING APPEAL
FOR LACK OF APPELLATE JURISDICTION
(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon review of the record, it appears that we lack jurisdiction over Petitioner-Appellant Casey C. Eason's (Appellant Eason) appeal from the Honorable Elizabeth A. Strance's October 30, 2008 decision and order denying Appellant Eason's petition for post-conviction relief pursuant to Rule 40 of the Hawai'i Rules of Penal Procedure (HRPP), because Appellant Eason's appeal is untimely under Rule 4(b) of the Hawai'i Rules of Appellate Procedure (HRAP).

With respect to the issue of timeliness, "pursuant to HRAP Rule 4(b), an appeal from an order denying post-conviction relief must either be filed within thirty days after the entry of the order denying the HRPP Rule 40 petition or, in the alternative, after the announcement but before the entry of the order." Grattafiori v. State, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995). Appellant Eason is a pro se prisoner, and, under analogous circumstances in a civil case, the supreme court has held that when a pro se prisoner attempts to assert an appeal, the "notice of appeal is deemed filed for purposes of Hawai'i Rules of Appellate Procedure (HRAP) Rule 4(a) on the day it is tendered to prison officials by a pro se prisoner." Setala v. J.C. Penney Company, 97 Hawai'i 484, 485, 40 P.3d 886, 887 (2002) (internal quotation marks omitted). Therefore, although the circuit court filed Appellant Eason's notice of appeal on December 9, 2008, the official date of Appellant Eason's notice of appeal is actually December 3, 2008, which (according to the date of Appellant Eason's signature and certificate of service

NORMA T. YARA
CLERK, APPELLATE COURT
STATE OF HAWAII

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for Appellant Eason's notice of appeal) is the date on which Appellant Eason tendered his notice of appeal to prison officials for mailing. Nevertheless, Appellant Eason did not tender his December 3, 2008 notice of appeal to prison officials for mailing within thirty days after entry of the October 30, 2008 order denying Appellant Eason's HRPP Rule 40 petition for post-conviction relief, as HRAP Rule 4(b) requires under the holding in Setala. Therefore, Appellant Eason's appeal from the October 30, 2008 order denying Appellant Eason's HRPP Rule 40 petition for post-conviction relief is not timely.

"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 on our motion if we lack jurisdiction." Grattafiori, 79 Hawai'i at 13, 897 P.2d at 940 (citations, internal quotation marks, and brackets omitted); HRAP Rule 26(b) ("[N]o court or judge or justice is authorized to change the jurisdictional requirements contained in Rule 4 of these rules."). Appellant Eason's appeal is untimely and we lack appellate jurisdiction. Therefore,

IT IS HEREBY ORDERED that the appeal in appellate court case number 29511 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, April 2, 2009.


Presiding Judge


Associate Judge


Associate Judge