

NO. 29549

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellant, v.
MARYANN ACKER, Defendant-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 56042)

EM. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2009 APR -6 AM 9:28

FILED

ORDER GRANTING MARCH 9, 2009 MOTION TO DISMISS APPEAL
(By: Foley, Presiding Judge, Nakamura and Leonard, JJ.)

Upon review of (1) Defendant-Appellee Maryann Acker's (Appellee Acker) March 9, 2009 motion to dismiss this appeal, (2) the lack of any opposition by Plaintiff-Appellant State of Hawaii (Appellant State) to Appellee Acker's March 9, 2008 motion to dismiss this appeal, and (3) the record, it appears that we lack jurisdiction over Appellant State's appeal from the Honorable Michael A. Town's December 29, 2008 "Findings of Fact, Conclusions of Law, and Order Granting in Part and Denying in Part State's Notice of Intent to Use Evidence" (the December 29, evidentiary order), and, thus, dismissal is warranted.

The right of appeal in a criminal case is purely statutory and exists only when given by some constitutional or statutory provision. . . . The prosecution's right to appeal in a criminal case is limited to those instances set forth in HRS § 641-13. . . . This court has adhered to the principle that statutes granting the State the right of appeal in criminal cases must be strictly construed. They are not to be enlarged by construction and cannot be extended beyond their plain terms. . . . In applying the rule of strict construction, this court examines the substance, not the form, of the matter to determine whether the prosecution may appeal it under HRS § 641-13.

State v. Naititi, 104 Hawai'i 224, 233, 87 P.3d 893, 902 (2004) (citations, internal quotation marks, and brackets omitted).

Hawaii Revised Statutes (HRS) § 641-13(7) (Supp. 2008) authorizes Appellee State to appeal "[f]rom a pretrial order

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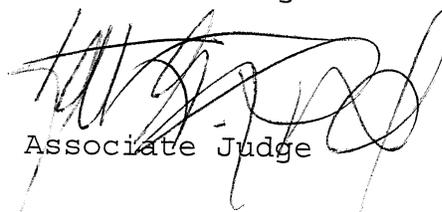
granting a motion for the suppression of evidence, including a confession or admission, or the return of property, in which case the appellate court shall give priority to such an appeal and the order shall be stayed pending the outcome of the appeal[.]" HRS § 641-13(7) (Supp. 2008). With respect to the phrase "motion for the suppression," the supreme court has held that "[t]he scope of the motion to suppress . . . includes within its ambit the exclusion of evidence illegally obtained." State v. Kirn, 70 Haw. 206, 208, 767 P.2d 1238, 1239 (1989) (citation omitted; emphasis in original); See also State v. Miura, 6 Haw. App. 501, 504, 730 P.2d 917, 920 (1986). Because the December 29, 2008 evidentiary order does not arise from a motion to suppress illegally obtained evidence, HRS § 641-13(7) (Supp. 2008) does not authorize Appellant State to appeal from the December 29, 2008 evidentiary order. Absent an appealable order or judgment, we lack jurisdiction over this appeal.

Therefore, IT IS HEREBY ORDERED that Appellee Acker's March 9, 2009 motion to dismiss appellate court case number 29549 is granted, and this appeal is dismissed.

DATED: Honolulu, Hawai'i, April 6, 2009.


Daniel P. Foley
Presiding Judge


Craig H. Nakamura
Associate Judge


Associate Judge