

NO. 29572

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

GARY KARAGIANES, Petitioner-Appellant, v.
STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(S.P.P. NO. 08-1-0008; CR. NO. 92-0340)

ORDER DENYING MAY 26, 2009 MOTION TO
RECONSIDER APRIL 30, 2009 DISMISSAL ORDER
(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon review of (a) the April 30, 2009 order dismissing the appeal that Petitioner-Appellant Gary Karagianes (Appellant Karagianes) has asserted in appellate court case number 29572, (2) Appellant Karagianes's May 26, 2009 letter to the intermediate court of appeals, which we deem to be a motion for reconsideration of the April 30, 2009 dismissal order pursuant to Rule 40 of the Hawai'i Rules of Appellate Procedure (HRAP), and (3) the record, it appears that Appellant Karagianes's May 26, 2009 HRAP Rule 40 motion for reconsideration of the April 30, 2009 order dismissing Appellant Karagianes's appeal is untimely and lacks merit.

Although Appellant Karagianes appears to have tendered his HRAP Rule 40 motion for reconsideration of the April 30, 2009 dismissal order to prison officials for mailing on May 19, 2009 (which the appellate court clerk file-stamped with the date May 26, 2009),¹ Appellant Karagianes failed to tender his HRAP Rule 40 motion for reconsideration to prison officials for mailing within ten days after the April 30, 2009 filing of the

¹ The supreme court has held that, under similar circumstances, 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).

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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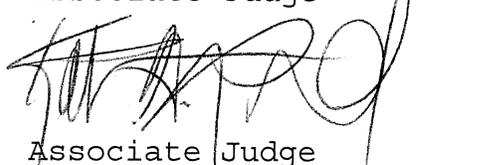
order dismissing Appellant Karagianes's appeal, as HRAP Rule 40(a) required. Therefore, even with an effective date of May 19, 2009, Appellant Karagianes's May 26, 2009 HRAP Rule 40 motion for reconsideration is untimely under HRAP Rule 40(a).

As already noted in the April 30, 2009 order dismissing Appellant Karagianes's appeal, Appellant Karagianes did not file his notice of appeal within thirty days after entry of the orders that he sought to appeal, as HRAP Rule 4(b)(1) requires. Therefore, Appellant Karagianes's notice of appeal was untimely. Appellant Karagianes's May 26, 2009 HRAP Rule 40 motion for reconsideration of the April 30, 2009 dismissal order does not state any points of law or fact that we have overlooked or misapprehended.

Accordingly, IT IS HEREBY ORDERED that Appellant Karagianes's May 26, 2009 motion for reconsideration of the April 30, 2009 order dismissing Appellant Karagianes's appeal is denied.

DATED: Honolulu, Hawai'i, May 29, 2009.


Presiding Judge


Associate Judge

Associate Judge