

NO. 29596

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
MICHAEL C. TIERNEY, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 08-1-0869)

ORDER DISMISSING APPEAL
FOR LACK OF APPELLATE JURISDICTION
(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon review of the record for this case, it appears that we lack jurisdiction over Defendant-Appellant Michael Tierney's (Appellant Tierney) appeal from a criminal case, the Honorable Richard K. Perkins presiding, in which a jury found Appellant Tierney guilty of theft in the second degree in violation of Hawaii Revised Statutes (HRS) § 708-831 (Supp. 2007) and burglary in the second degree in violation of HRS § 708-811 (1993), because the circuit court has not yet sentenced Appellant Tierney.

Pursuant to HRS § 641-11 (Supp. 2008), "[a]ny party 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." However, under HRS § 641-11, "[t]he sentence of the court in a criminal case shall be the judgment." The circuit court has not yet entered any sentence against Appellant Tierney, and, thus, HRS § 641-11 does not authorize Appellant Tierney's appeal at this time. State v. Johnston, 63 Haw. 9, 11, 619 P.2d 1076, 1077 (1980).

EM RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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Absent an appealable judgment, Appellant Tierney's appeal is premature and we lack jurisdiction. Accordingly,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of jurisdiction.

DATED: Honolulu, Hawai'i, April 30, 2009.


Cheryl R. Fleay
Presiding Judge


Auna Don Tjijim
Associate Judge


Associate Judge