

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29865

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
ROLAND A. BALLESTEROS, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CR. NO. 08-1-0438)

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2009 AUG 19 AM 8:46

FILED

ORDER GRANTING DEFENDANT-APPELLANT
ROLAND A. BALLESTEROS'S AUGUST 12, 2009 MOTION
TO DISMISS APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Watanabe, Acting C.J., Foley and Nakamura, JJ.)

Upon review of (1) Defendant-Appellant Roland A. Ballesteros's (Appellant Ballesteros) August 12, 2009 motion to dismiss his appeal from the Honorable Joel E. August's May 8, 2009 order granting Appellant Ballesteros's motion for deferred acceptance of his no contest (DANC) plea to arson in the second degree in violation of Hawaii Revised Statutes (HRS) § 708-8252 (Supp. 2008) for lack of appellate jurisdiction, and (2) the record, it appears that we lack jurisdiction over Appellant Ballesteros's appeal because HRS § 641-11 (Supp. 2008) does not authorize such an appeal.

"The right of appeal in a criminal case is purely statutory and exists only when given by some constitutional or statutory provision." State v. Pooхина, 97 Hawai'i 505, 509, 40 P.3d 907, 911 (2002) (citation and internal quotation marks omitted). "In a circuit court criminal case, a defendant may appeal from the judgment of the circuit court, see HRS § 641-11 (1993), from a certified interlocutory order, see HRS § 641-17 (1993), or from an interlocutory order denying a motion to

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dismiss based on double jeopardy." State v. Kealaiki, 95 Hawai'i 309, 312, 22 P.3d 588, 591 (2001) (citation omitted). The May 8, 2008 order granting Appellant Ballesteros's DANC plea does not belong to any of these three categories of statutorily authorized appeals for a criminal defendant. For example, although "[a]ny 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), the supreme court has explained that,

[u]nder HRS § 641-11, the sentence of the court in a criminal case is the judgment from which an appeal is authorized. Because there is no conviction when the acceptance of a plea is deferred, . . . an order granting a DANC plea such as the one issued here is not a conviction nor is it a sentence. There having been no conviction and sentence in this case, there can be no appeal under HRS § 641-11 from the . . . order granting Defendant's plea deferral.

Kealaiki, 95 Hawai'i 309, 312, 22 P.3d 588, 591 (2001)

(citations, internal quotation marks, original brackets, and original ellipsis points omitted) (dismissing a defendant's appeal from an order granting a DANC plea for lack of appellate jurisdiction). Similarly in the instant case, HRS § 641-11 does not authorize Appellant Ballesteros's appeal from the May 8, 2009 order granting Appellant Ballesteros's DANC plea.

Absent a statute authorizing an appeal from the May 8, 2009 order granting Appellant Ballesteros's DANC plea, we lack jurisdiction over Appellant Ballesteros's appeal. Accordingly,

IT IS HEREBY ORDERED that Appellant Ballesteros's August 12, 2009 motion to dismiss this appeal for lack of

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appellate jurisdiction is granted, and appellate court case number 29865 is dismissed for lack of jurisdiction.

DATED: Honolulu, Hawai'i, August 19, 2009.

Corinne K. A. Wataxalu

Acting Chief Judge

Daniel R. Foley

Associate Judge

Cris ed. Nekama

Associate Judge