

*** NOT FOR PUBLICATION ***

NO. 27036

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellant/Cross-Appellee

vs.

SHAUN LARKIN, Defendant-Appellee/Cross-Appel

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

2005 APR 20 PM 3:02

FILED

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 01-1-1825)

ORDER DISMISSING APPEAL
AS TO DEFENDANT SHAUN LARKIN

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon review of the record, it appears that judgment has not been entered in Cr. No. 01-1-1825. The appeal by defendant Shaun Larkin from the December 20, 2004 order denying the motion to dismiss indictment as to Counts I, II and III is an appeal of an interlocutory order. The December 20, 2004 order was not certified for appeal pursuant to HRS § 641-17 and is not immediately appealable by defendant Larkin as an appellant or a cross-appellant. See HRS § 641-11; Grattafiori v. State, 79 Hawai'i10, 13, 897 P.2d 937, 940 (1995) ("The right of appeal in a criminal case is purely statutory and exists only when given by some constitutional or statutory provision."); HRAP 4.1(a)(3) ("the defendant may file a cross-appeal . . . if the appeal is otherwise allowed by law."). Thus, we lack jurisdiction as to defendant Larkin's appeal. Therefore,

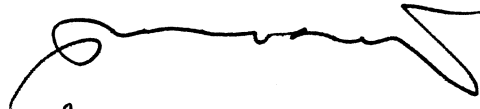
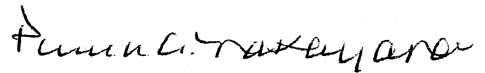
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IT IS HEREBY ORDERED that the appeal by defendant Shaun Larkin is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, April 20, 2005.



Steven H. Levinson



Renee E. Dubois, Jr.