

*** NOT FOR PUBLICATION ***

NO. 27142

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

EDUARDO CALIBUSO, Defendant-Appellant.

APPEAL FROM THE SECOND CIRCUIT COURT
(CR. NO. 87-0198)

ORDER DISMISSING APPEAL

(By: Nakayama, J. for the court¹)

Upon review of the record, it appears that the March 15, 1988 judgment was appealable by notice of appeal filed within thirty days after the judgment was entered. See HRAP 4(b)(1). The circuit court purported to grant appellant post-conviction relief in the form of allowing appellant to file this appeal from the March 15, 1988 judgment, but the granting of such relief is not authorized by HRPP 40(g). See State v. Mamalias, 69 Haw. 581, 582, 751 P.2d 1029, 1030 (1988) ("the clear provisions of HRAP 4(b) and of HRPP 40(g) do not allow the trial judge the power to enter an order, in an HRPP 40 proceeding, extending the expired time for appeal in the underlying criminal case."). The appeal of the March 15, 1988 judgment is untimely and we lack jurisdiction. See Grattafiori v. State, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995) ("[C]ompliance with the requirement of the timely filing of a notice of appeal [in a criminal matter] is

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¹Considered by: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.

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jurisdictional, and we must dismiss an appeal on our own motion if we lack jurisdiction."); HRAP 26(b) ("[N]o court or judge or justice is authorized to change the jurisdictional requirements [of the 30-day appeal period] contained in Rule 4 of [the HRAP]."). Therefore,

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

DATED: Honolulu, Hawai'i, October 13, 2005.

FOR THE COURT:

Aunika C. Nakayama
Associate Justice

