

*** NOT FOR PUBLICATION ***

NO. 27155

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

KENNETH WAKISAKA, Defendant-Appellant.

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 01-1-0738)

ORDER DISMISSING APPEAL

(By: Nakayama, J. for the court¹)

Upon review of the statements supporting and contesting jurisdiction and the record, it appears that the February 4, 2005 order dismissing the indictment without prejudice is not appealable by appellant inasmuch as HRS § 641-11 authorizes a defendant in a circuit court criminal case to appeal only from a judgment of conviction. See Grattafiori v. State, 79 Hawai'i 10, 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."). The February 4, 2005 order denying dismissal of Cr. No. 01-1-0738 on grounds of double jeopardy is not appealable under the collateral order doctrine inasmuch Cr. No. 01-1-0738 was dismissed and appellant does not face exposure to double jeopardy in that case. See State v. Baranco, 77 Hawai'i 351, 884 P.2d 729 (1994). Thus, we lack jurisdiction over this appeal. Therefore,

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

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

DATED: Honolulu, Hawai'i, July 15, 2005.

FOR THE COURT:

Puna A. Nabezana

Associate Justice

