

NO. 27156

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

STEVEN LAGAFATASI, Defendant-Appellant

KHAMAKAO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2005 MAY 31 PM 12:31

FILED

APPEAL FROM THE FIRST CIRCUIT COURT
(FC-CR. NO. 04-1-1592)ORDER(By: Moon, C.J., Levinson, Nakayama, and
Duffy, JJ.; With Acoba, J., Concurring Separately)

Upon review of the counterstatement of jurisdiction filed by Plaintiff-Appellee State of Hawai'i and the records and files herein, it appears that: (1) Defendant-Appellant is appealing from the January 31, 2005 order setting aside the oral order of November 3, 2004 dismissing the case, judicial determination of unfitness to proceed, suspension of proceedings, and order of commitment to the custody of the director of the Department of Health; (2) the right to appeal in a criminal case is purely statutory and exists only when given by some constitutional or statutory provision, State v. Oshiro, 69 Haw. 438, 746 P.2d 568 (1987); (3) Appellant cites HRS § 641-11 and HRS § 571-54 as the statutory grounds for appeal; (4) HRS § 641-11 allows an appeal from a judgment of a circuit court, but the order being appealed in the instant case is not a circuit court judgment, see State v. Johnson, 63 Haw. 9, 619 P.2d 1076

(1980) (unless an appeal taken pursuant to HRS § 641-11 is from a final judgment or sentence, an appeal must be dismissed by the appellate court for lack of jurisdiction); (5) the order being appealed is not appealable pursuant to HRS § 571-54, which governs appeals in family court cases; and (6) inasmuch as the order being appealed is not an appealable order pursuant to HRS § 641-11 or HRS § 571-54, this court lacks jurisdiction.

Therefore,

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

DATED: Honolulu, Hawai'i, May 31, 2005.



Steven H. Levinson

Punua C. Tutenjova

James S. Duffy, Jr.

I concur in the result.

