

\*\*\* NOT FOR PUBLICATION \*\*\*

NO. 27166

IN THE SUPREME COURT OF THE STATE OF HAWAII

NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2005 AUG -4 AM 11:05

FILED

DAT MINH TRAN, Petitioner-Appellant,  
vs.  
STATE OF HAWAII, Respondent-Appellee.

APPEAL FROM THE FIRST CIRCUIT COURT  
(S.P.P. NO. 03-1-0052)

ORDER DISMISSING APPEAL  
(By: Nakayama, J. for the court<sup>1</sup>)

Upon review of the record, it appears that the circuit court's January 27, 2005 order denying appellant's HRPP Rule 40 petition for post-conviction relief was appealable by notice of appeal filed with the circuit court within thirty days after the order was entered. See HRPP 40(h); HRAP 4(b)(1). Appellant's notice of appeal was filed with the circuit court on March 8, 2005, thirty-eight days after entry of the January 27, 2005 order and was untimely. Our recognized exceptions to the requirement that notices of appeal be timely filed do not apply in this case. Thus, 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 is jurisdictional, and we must dismiss an appeal on our own motion if we lack jurisdiction."). Therefore,

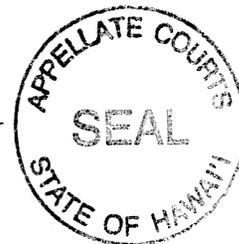
IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, August 4, 2005.

FOR THE COURT:

*Diana C. Nakayama*

Associate Justice



<sup>1</sup>Considered by: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.