

*** NOT FOR PUBLICATION ***

NO. 27328

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

CHRIS GRINDLING, Petitioner-Appellant

vs.

STATE OF HAWAI'I, Respondent-Appellee

NORMA T. YARRA
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2005 DEC 21 PM 2:30

FILED

APPEAL FROM THE SECOND CIRCUIT COURT
(S.P.P. NO. 05-1-0011)

ORDER DISMISSING APPEAL

(By: Nakayama, J. for the court¹)

Upon review of the record, it appears that the decision denying waiver of the filing fee for the Rule 40 petition was an interlocutory decision that was not appealable until entry of the July 28, 2005 judgment on the petition. See HRPP 40(h); HRS § 641-11. The May 27, 2005 notice of appeal was filed before announcement and entry of the July 28, 2005 judgment and is not a valid notice of appeal from the judgment and the decision denying waiver of the filing fee. See HRAP 4(b)(4); Grattafiori v. State, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995). Thus, we lack jurisdiction. Therefore,

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

DATED: Honolulu, Hawai'i, December 21, 2005.

FOR THE COURT:

Diana A. Nakayama
Associate Justice



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