

*** NOT FOR PUBLICATION ***

NO. 25376

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

STEPHEN I. LANSE, Defendant-Appellant

EMERSON
STATE OF HAWAII
APPELLATE COURTS

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FILED

APPEAL FROM THE SECOND CIRCUIT COURT
(CR. NO. 98-0319)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, and Nakayama, JJ.,
Circuit Judge Town, assigned by reason of vacancy,
and Acoba, J., concurring separately)

Defendant-appellant, Stephen I. Lanse [hereinafter "Lanse"], appeals from an August 29, 2002 order of the second circuit court denying his June 25, 2002 motion for reconsideration of the denial of his previous motion for the deferred acceptance of his no contest plea [hereinafter "DANCP motion"] to the charges of (1) promoting a dangerous drug in the third degree, in violation of Hawai'i Revised Statutes [hereinafter "HRS"] § 712-1243(1) (1993),¹ (2) prohibited acts related to drug paraphernalia, in violation of HRS § 329-43.5(a) (1993),² and (3) promoting a detrimental drug in the third

¹ HRS § 712-1243(1) provides that "[a] person commits the offense of promoting a dangerous drug in the third degree if the person knowingly possesses any dangerous drug in any amount."

² HRS § 329-34.5(a) provides as follows:

[§329-43.5] Prohibited acts related to drug paraphernalia.
(a) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter. Any person

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degree, in violation of HRS § 712-1249(1) (1993).³ On appeal, Lanse essentially raises the following two arguments: (1) the circuit court had the inherent power to entertain his motion for reconsideration; and (2) there is no statutory prohibition on the circuit court's exercise of its inherent power.

However, having carefully reviewed the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we conclude that HRS § 641-11 does not authorize a criminal defendant to appeal from the circuit court's denial of a motion for reconsideration of a previous denial of a DANCP motion.⁴ Accordingly, this court lacks jurisdiction to entertain the appeal.⁵ We note, however, that Lanse may, by filing a petition

who violates this section is guilty of a class C felony and upon conviction may be imprisoned pursuant to section 706-660 and, if appropriate as provided in section 706-641, fined pursuant to section 706-640.

³ HRS § 712-1249(1) provides that "[a] person commits the offense of promoting a detrimental drug in the third degree if the person knowingly possesses any marijuana or any Schedule V substance in any amount."

⁴ HRS § 641-11 provides as follows:

Any party deeming oneself aggrieved by the judgment of a circuit court in a criminal matter, may appeal to the supreme court, subject to chapter 602 in the manner and within the time provided by the Hawaii Rules of Appellate Procedure. The sentence of the court in a criminal case shall be the judgment. All appeals, whether heard by the intermediate appellate court or the supreme court, shall be filed with the clerk of the supreme court and shall be subject to one filing fee.

(Emphases added.)

⁵ See State v. Kalani, 87 Hawai'i 260, 261, 953 P.2d 1358, 1359 (1998) ("The right of appeal in a criminal case is purely statutory and exists only when given by some constitutional or statutory provision.") (Quoting State v. Fukusaku, 85 Hawai'i 462, 490, 946 P.2d 32, 60 (1997) (quoting State v. Wells, 78 Hawai'i 373, 376, 894 P.2d 70, 73, reconsideration denied, 78 Hawai'i 474, 896 P.2d 930 (1995))).

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for post-conviction relief pursuant to Hawai'i Rules of Penal Procedure [hereinafter "HRPP"] Rule 40 (2005), move to withdraw his no contest plea in order to ameliorate any "manifest injustice." HRPP Rule 32(d) (2005). Therefore,

IT IS HEREBY ORDERED that Lanse's appeal is dismissed for lack of jurisdiction.

DATED: Honolulu, Hawai'i, March 8, 2006.

On the briefs:

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for defendant-appellant
Stephen I. Lanse

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State of Hawai'i

