

NO. 26149

IN THE SUPREME COURT OF THE STATE OF HAWAII

 RAITA FUKUSAKU, Petitioner-Appellant,

vs.

STATE OF HAWAII, Respondent-Appellee

 APPEAL FROM THE FIRST CIRCUIT COURT
 (S.P.P. NO. 02-1-0087)

 KHAMAKAOD
 CLERK, APPELLATE COURTS
 STATE OF HAWAII

2006 NOV 14 AM 10:15

FILED

ORDER DISMISSING NOTICE OF APPEAL AND PERMITTING
PETITIONER-APPELLANT TO FILE AN APPROPRIATE APPLICATION
FOR WRIT OF CERTIORARI IN ACCORDANCE WITH
HAWAII RULES OF APPELLATE PROCEDURE RULE 40.1
 (By: Duffy, J., for the court¹)

It appearing that (1) petitioner-appellant Raita Fukusaku filed a "notice of appeal," seeking review of the Intermediate Court of Appeals (ICA)'s September 12, 2006 Summary Disposition Order (SDO) that affirmed the Circuit Court of the First Circuit's May 30, 2003 order denying the Hawaii Rules of Penal Procedure Rule 40 petition, (2) the appropriate vehicle for seeking review of the ICA's SDO is an application for a writ of certiorari, pursuant to Hawaii Rules of Appellate Procedure Rule 40.1 and Hawaii Revised Statutes § 602-59, as amended by Act 149 of the 2006 Hawaii Session Laws, and (3) insofar as the ICA's judgment on appeal was filed on September 26, 2006, the deadline to file the application for a writ of certiorari will not expire until December 26, 2006,

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

IT IS HEREBY ORDERED that the "Notice of Appeal" is dismissed, and Fukusaku may, if he so chooses, file an application for a writ of certiorari in accordance with HRAP Rule 40.1. The application must be filed by the close of business on December 26, 2006.

DATED: Honolulu, Hawai'i, November 14, 2006.

FOR THE COURT:

Kana E. Dullo

Associate Justice

