

\*\*\* NOT FOR PUBLICATION \*\*\*

NO. 27223

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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KENNETH JELKS, Petitioner-Appellant

vs.

STATE OF HAWAI'I, Respondent-Appellee

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APPEAL FROM THE FIRST CIRCUIT COURT  
(S.P.P. NO. 04-1-0003; CR. NO. 94-0257)

KHAMAKA'DO  
CLERK APPELLATE COURTS  
STATE OF HAWAI'I

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FILED

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that the circuit court's February 24, 2005 order denying appellant's HRPP Rule 40 petition for post-conviction relief was appealable by notice of appeal filed within thirty days after the order was entered. See HRPP 40(h); HRAP 4(b)(1). The circuit court found that appellant did not tender his notice of appeal to prison authorities at any time before March 30, 2005, the date that prison authorities mailed the notice of appeal. The notice of appeal is deemed filed on March 30, 2005, thirty-four days after entry of the February 24, 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 over this appeal. See Grattafiori v. State of Hawai'i, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995) ("[C]ompliance with the requirement

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

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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, March 9, 2006.

FOR THE COURT:

*Puna A. Nakayama*

Associate Justice

