

*** NOT FOR PUBLICATION ***

NO. 27597

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

ANGEL INOUE, Petitioner-Appellant

vs.

STATE OF HAWAI'I, Respondent-Appellee

K HAMAKAOU
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2006 MAY 30 AM 10:52

FILED

APPEAL FROM THE FIRST CIRCUIT COURT
(S.P.P. NO. 05-1-0012)ORDER DISMISSING APPEAL(By: Nakayama, J., for the court¹)

Upon review of the record, it appears that the circuit court's October 11, 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 November 14, 2005, thirty-four days after entry of the October 11, 2005 order, and was untimely. Our recognized exceptions to the requirement that notices of appeal be timely filed do not apply in this case.

It further appears that appellant's notice of appeal does not fall within the prisoner mailbox rule because the record does not indicate that appellant tendered his notice of appeal to prison officials at the Tutwiler Correctional Facility for forwarding to the clerk of the circuit court on or before

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

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November 10, 2005. See Setala v. J.C. Penney, 97 Hawai'i 484, 40 P.3d 886 (2002). 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, May 30, 2006.

FOR THE COURT:

Puna O. Kamehameha
Associate Justice

