

*** NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER ***

NO. 27505

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

ANTHONY L. REGAN, Petitioner-Appellant,

vs.

STATE OF HAWAI'I, Respondent-Appellee.

K. HANAKAHO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

APPEAL FROM THE FIRST CIRCUIT COURT
(S.P.P. NO. 04-1-0076; CR. NO. 01-1-2155)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Petitioner-Appellant, Anthony L. Regan ("Regan"), appeals from the first circuit court's July 11, 2005 order in favor of Respondent-Appellee, State of Hawai'i ("prosecution").¹ On appeal, Regan presents the following arguments: (1) that he was denied the effective assistance of counsel; (2) the revocation of his probation was unlawful; (3) he was persuaded to plead guilty by threats; (4) he was subject to an excessive sentence and double jeopardy; and (5) the circuit court violated his due process rights in denying his petition for post-conviction relief without a hearing.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold that Regan failed to timely file his notice of appeal, inasmuch as: (1) the "primary relief" sought from his July 26, 2005 "motion for reconsideration and/or certificate of appealability" was for reconsideration of the circuit court's July 11, 2005 order denying post-conviction relief, with the possibility of appeal as

a "default remedy";² and (2) his "motion for reconsideration and/or certificate of appealability" did not toll the thirty-day time limit pursuant to Hawai'i Rules of Appellate Procedure Rule 4(b)(1) to file a notice of appeal.³ As a result, Regan's September 20, 2005 "notice of appeal" was untimely. Therefore,

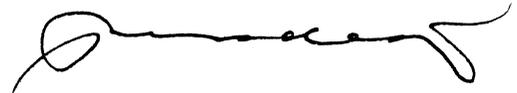
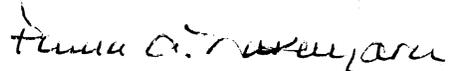
IT IS HEREBY ORDERED that this appeal is dismissed for lack of jurisdiction.

DATED: Honolulu, Hawai'i, August 31, 2007.

On the briefs:

Anthony L. Regan,
petitioner-appellant
pro se

Brian R. Vincent,
Deputy Prosecuting Attorney,
for respondent-appellee,
State of Hawai'i



Brian R. Vincent, Jr.

² See Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987) (holding that the "primary relief" sought is reconsideration); see also Buffalo v. Sunn, 854 F.2d 1158, 1161-62 (9th Cir. 1988) (holding that the State intended an appeal as its first choice of remedy).

³ See State v. Brandimart, 68 Haw. 495, 720 P.2d 1009 (1986) (holding that a motion for reconsideration is not a tolling motion).