

NO. 28133

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

v.

WALTER WAYNE DEGUAIR, Defendant-Appellant

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

2007 JAN 25 PM 1:45

FILED

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CR. NO. 92-0509)

ORDER ACCEPTING APPLICATION FOR
WRIT OF CERTIORARI, VACATING ORDER DISMISSING APPEAL
AND REMANDING APPEAL TO THE INTERMEDIATE COURT OF APPEALS
(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Petitioner-appellant Walter Deguair applies for a writ of certiorari to review the Intermediate Court of Appeals' November 30, 2006 order dismissing petitioner's appeal for lack of appellate jurisdiction. The Intermediate Court of Appeals concluded that the order appealed -- an August 7, 2006 order denying a May 8, 2006 post-judgment motion filed by petitioner in Cr. No. 92-0509 -- is an order denying an HRPP Rule 36 motion to correct a clerical error that is not an appealable order.

Petitioner's May 8, 2006 motion, by title, was an HRPP Rule 36 motion to correct a clerical error in a sentence, but in substance, was a motion to correct a sentence alleged to be illegal because it did not comport with the sentence pronounced. The motion, in substance, was a motion, made more than ninety days after imposition of sentence, to correct an illegal sentence pursuant to HRPP Rule 40(a)(1)(iii). See HRPP Rule 35(a) ("A motion made by a defendant to correct an illegal sentence more

than 90 days after the sentence is imposed shall be made pursuant to Rule 40 of these rules."). The August 7, 2006 order denying the May 8, 2006 motion is a judgment entered pursuant to HRPP Rule 40(g)(3) that is appealable pursuant to HRS § 641-11. Therefore,

IT IS HEREBY ORDERED that the application for a writ of certiorari is accepted.

IT IS FURTHER ORDERED that: (1) the November 30, 2006 order of the Intermediate Court of Appeals dismissing No. 28133 for lack of appellate jurisdiction is vacated and (2) No. 28133 is remanded to the Intermediate Court of Appeals for disposition on the merits.

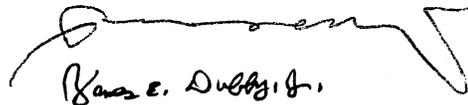
DATED: Honolulu, Hawai'i, January 25, 2007.

Walter Wayne Deguair, *pro se*
on the application



Steven Levinson

Keoni C. Takayama



Karen E. Dubby, J.