

NO. 30406

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

DORIAN DOUGLAS WHALEY, Petitioner-Appellant, v.
FABIANO VILLAREALE, Respondent-Appellee

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
(CASE NO. DC-TRO-10-1-0055)

ORDER GRANTING THE MOTION FOR RECONSIDERATION

(By: Fujise, Presiding Judge, Leonard and Ginoza, JJ.)

Upon consideration of Petitioner-Appellant Dorian Douglas Whaley's (Appellant) document filed on October 6, 2010, which this court will review as a motion for reconsideration of the September 28, 2010 Order Dismissing Appeal Pursuant to HRAP Rule 11(c)(2), the papers in support, and the records and files herein, it appears that: (1) on March 29, 2010, Appellant filed a notice of appeal from the Order of Dismissal filed by the District Court of the Second Circuit (district court); (2) Appellant did not pay the filing fee; (3) Appellant filed an application for leave to proceed in forma pauperis in the district court pursuant to HRAP Rule 24, which the district court denied, but the district court did not state in writing the reason for the denial; (4) after the district court denied the request, Appellant did not move to proceed in forma pauperis in

the appellate court and did not pay the filing fee; (5) on June 21, 2010, the appellate clerk informed Appellant that: (a) the record could not be filed without payment of the filing fee or an order allowing Appellant to proceed in forma pauperis; and (b) the matter would be called to the attention of the court on June 28, 2010 for such action as the court deems proper pursuant to HRAP Rule 11(c)(2), including dismissal of the appeal; (6) after the notification by the appellate clerk, Appellant did not pay the filing fee or seek leave to proceed in forma pauperis, and (7) although Appellant failed to seek relief from default within the time provided by the appellate clerk's letter, the court will allow Appellant additional time to pay the filing fee or move to proceed in forma pauperis on appeal given the record in this case. Therefore,

IT IS HEREBY ORDERED that the motion for reconsideration is granted as follows:

1. The order of dismissal is vacated.
 2. Within fifteen (15) days from the date of this order, Appellant shall pay the filing fee for this appeal or file an application to proceed in forma pauperis on appeal consistent with Hawaii Rules of Appellate Procedure Rule 24(2010).
 3. Failure of Appellant to comply with this order will result in dismissal of the appeal.
 4. The court will grant no further extensions of time.
- DATED: Honolulu, Hawaii, October 18, 2010.

Presiding Judge

Associate Judge

Associate Judge