

NO. 30577

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
ANTHONY KASSEBEER, JR., aka Tony Boy, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CR. NO. 04-1-0688)

ORDER GRANTING MOTION TO DISMISS APPEAL  
AND REGARDING RESPONSE TO ORDER TO SHOW CAUSE  
(By: Nakamura, C.J., Foley and Ginoza, JJ.)

Upon consideration of the Motion to Dismiss Appeal Pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 42(c) filed by William H. Jameson, counsel for Defendant-Appellant Anthony Kassebeer, Jr. (Appellant); the papers in support, and the records and files herein, it appears that:

(1) on June 21, 2010, Appellant filed a notice of appeal from a judgment of conviction and sentence entered in the Circuit Court of the First Circuit; (2) Appellant did not file the statement of jurisdiction or the opening brief; (3) on May 26, 2011, this court issued an order, which provides in relevant part:

**NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER**

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IT IS HEREBY ORDERED that Appellant shall file the statement of jurisdiction within ten days from the date of this order and file the opening brief within thirty days from the date of this order. Alternatively, Appellant may file a dismissal of the appeal pursuant to HRAP Rule 42(c).

(4) HRAP Rule 42(c) governs dismissal of appeals in criminal cases and provides:

In a criminal appeal by a defendant, the stipulation or motion for dismissal of the appeal shall be supported by the defendant's affidavit or declaration that reflects a knowing and intelligent understanding of the consequences of the dismissal of the appeal and that the withdrawal is made voluntarily. In circumstances where the defendant cannot be located after a diligent effort, the circumstances of the effort should be set forth in an affidavit or declaration of counsel in support of the stipulation or motion.

(5) the motion to dismiss is not supported by Appellant's declaration, but the declaration of Appellant's counsel, William H. Jameson, Jr. (Jameson), in support of the motion to dismiss states that Jameson has made numerous efforts to contact Appellant where Appellant resides, and Appellant has failed to respond to Jameson. Therefore,

IT IS HEREBY ORDERED that the Motion to Dismiss Appeal Pursuant to HRAP Rule 42(c) is granted.

IT IS FURTHER ORDERED that no further action shall be taken on the order to show cause issued on May 26, 2011.

DATED: Honolulu, Hawai'i, July 25, 2011.

Chief Judge

Associate Judge

Associate Judge