

NO. CAAP-12-0000534

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

DANA BORGES RAPOZO, Petitioner-Appellant, v.  
STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(S.P.P. NO. 10-1-0064; CR. NO. 52109)

ORDER GRANTING AUGUST 8, 2012 MOTION TO  
DISMISS APPEAL FOR LACK OF APPELLATE JURISDICTION  
(By: Fujise, Presiding Judge, Reifurth and Ginoza, JJ.)

Upon review of (1) Petitioner-Appellant Dana Borges Rapozo's (Appellant Rapozo) August 8, 2012 motion to dismiss appellate court case number CAAP-12-0000534 for lack of jurisdiction, (2) the lack of any memorandum in opposition to Appellant Rapozo's August 8, 2012 motion to dismiss appellate court case number CAAP-12-0000534 for lack of jurisdiction, and (3) the record, it appears that we lack appellate jurisdiction over Appellant Rapozo's appeal from the Honorable Michael D.

Wilson's April 26, 2012 "Order Denying Petition, in Part, and Granting an Evident[i]ary Hearing Regarding Young Adult Defendant Sentencing, and Appointing Counsel" (the April 26, 2012 order), because the April 26, 2012 order is not an appealable judgment pursuant to Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2011), Rule 40(h) of the Hawai'i Rules of Penal Procedure (HRPP), and the holding in Grattafiori v. State, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995).

Pursuant to HRS § 641-11 (Supp. 2011) and "HRPP [Rule] 40(h), appeals from proceedings for post-conviction relief may be made from a judgment entered in the proceeding and must be taken in accordance with Rule 4(b) of the Hawai'i Rules of Appellate Procedure (HRAP)." Grattafiori, 79 Hawai'i at 13, 897 P.2d at 940 (internal quotation marks and brackets omitted).

In the instant case, the circuit court has not yet entered a final judgment that resolves all of the issues in Appellant Rapozo's HRPP Rule 40 petition for post-conviction relief in S.P.P. No. 10-1-0064. The April 26, 2012 order resolves some, but not all, of the issues in Appellant Rapozo's HRPP Rule 40 petition for post-conviction relief. Therefore, Appellant Rapozo's appeal is premature and we lack appellate jurisdiction over appellate court case number CAAP-12-0000534. Accordingly,

IT IS HEREBY ORDERED that Appellant Rapozo's August 8, 2012 motion to dismiss appellate court case number CAAP-12-0000534 is granted, and appellate court case number CAAP-12-0000534 is dismissed for lack of appellate jurisdiction without

prejudice to Appellant Rapozo asserting a timely appeal from a future final judgment that resolves all the remaining issues in Appellant Rapozo's HRPP Rule 40 petition for post-conviction relief in S.P.P. No. 10-1-0064.

DATED: Honolulu, Hawai'i, August 15, 2012.

Presiding Judge

Associate Judge

Associate Judge