

NO. CAAP-11-00000810

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
PETER T. HOSHINO, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
(CASE NO. 1P111-1588)

ORDER GRANTING APRIL 26, 2012 MOTION TO  
DISMISS APPEAL FOR LACK OF APPELLATE JURISDICTION  
(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon review of (1) Defendant-Appellant Peter T. Hoshino's (Appellant Hoshino) April 26, 2012 motion to dismiss Appeal No. CAAP-11-0000810 for lack of jurisdiction, (2) Plaintiff-Appellee State of Hawaii's lack of response thereto, and (3) the record, it appears that the Honorable Paula Devens's October 12, 2011 judgment of conviction against Appellant Hoshino for negligent failure to control a dangerous dog in violation of Revised Ordinances of Honolulu § 7-7.2 (2011) does not contain the complete sentence that the district court intended to impose.

Hawaii Revised Statutes (HRS) § 641-12 (Supp. 2011) provides that "[a]ppeals upon the record shall be allowed from all final decisions and final judgments of district courts in all criminal matters." Under similar circumstances where a district court judgment provided part, but not all, of the district court's intended sentence, we held that the judgment was not final and appealable:

Judgments of conviction are not final unless they include the final adjudication and the final sentence. In the instant case, the sentence imposed was not the final sentence because the district court expressly left open the possibility that its sentence of Kilborn might include an order requiring Kilborn to pay restitution. The court did not finally decide whether it would order Kilborn to pay restitution and, if so, in what amount. Consequently, the December 5, 2003 Judgment is not final and, because it is not final, it is not appealable.

Accordingly, IT IS HEREBY ORDERED that the appeal from the December 5, 2003 Judgment is dismissed for lack of appellate jurisdiction.

State v. Kilborn, 109 Hawai'i 435, 442, 127 P.3d 95, 102 (App. 2005). In the instant case, the record indicates that, although the district court's October 12, 2011 judgment imposed part of the sentence against Appellant Hoshino, the district court did not include the intended restitution portion of the sentence in the October 12, 2011 judgment. Therefore, it appears that the October 12, 2011 judgment is not a final judgment, as HRS § 641-12 requires. Absent an appealable final judgment in the record on appeal, we cannot exercise appellate jurisdiction over Appeal No. CAAP-11-0000810. Accordingly,

IT IS HEREBY ORDERED that Appellant Hoshino's April 26, 2012 motion to dismiss Appeal No. CAAP-11-0000810 for lack of jurisdiction is granted, and appellate court case number CAAP-11-0000810 is dismissed without prejudice to Appellant Hoshino

asserting a timely appeal from final decision or final judgment in this case that determines the amount of restitution that Appellant Hoshino must pay as a part of his sentence.

DATED: Honolulu, Hawai'i, May 8, 2012.

Presiding Judge

Associate Judge

Associate Judge