

NO. CAAP-15-0000016

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
JACOB K. KAPU, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
(CASE NO. 2DTA-13-00982)

ORDER DISMISSING THE APPEAL PURSUANT TO HRAP RULE 30
(By: Leonard, Presiding Judge, Reifurth and Ginoza, JJ.)

Upon review of the record, it appears that:

(1) On January 8, 2015, Defendant-Appellant Jacob K. Kapu (Appellant) filed a notice of appeal, through private counsel, James R. McCarty (Counsel);

(2) On March 6, 2015, the district court clerk filed the record on appeal, and the appellate clerk notified the parties that the statement of jurisdiction and opening brief were due on or before March 16, 2015, and April 15, 2015, respectively;

(3) Appellant did not file either document, or request an extension of time;

(4) On May 11, 2015, the appellate clerk notified Appellant, through Counsel, that the time for filing the statement of jurisdiction and opening brief had expired, the matter would be called to the court's attention on May 21, 2015, for appropriate action, which could include dismissal of the appeal, pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 30, and Appellant may request relief from default by motion;

(5) On May 27, 2015, the court issued an order to show cause to Counsel to explain why the appeal should not be dismissed for failure to file the opening brief, and why he failed to file a statement of jurisdiction or opening brief, or request an extension of time;

(6) Counsel responded that he began medical treatments in December 2014, which interfered with his ability to work on the case;

(7) On October 18, 2016, the court took no further action on the order to show cause, and granted Appellant relief from default and an extension of time for the statement of jurisdiction and opening brief to October 28, 2016, and November 17, 2016, respectively. The court cautioned Appellant that any further default of the statement of jurisdiction or opening brief may result in the appeal being dismissed;

(8) Appellant took no further action and again defaulted on the statement of jurisdiction and opening brief;

(9) The court subsequently learned that on January 1, 2016, Counsel voluntarily went on inactive status, although he did not withdraw from representing Appellant in this case;

(10) On December 8, 2016, the court ordered Appellant to proceed pro se in this appeal, unless Appellant retained new counsel and new counsel entered an appearance, or Appellant filed a motion or stipulation to dismiss the appeal. The court also extended the deadlines for the statement of jurisdiction and opening brief to January 9, 2017, and February 6, 2017, respectively, and cautioned Appellant that any further default of the statement of jurisdiction or opening brief may result in the appeal being dismissed. The court ordered the appellate clerk to serve the order on Appellant at the address listed in the record for the underlying case, Case No. 2DTA-13-00982;

(11) The appellate clerk complied with the December 8, 2016 order, and no return mail was received; and

(12) Appellant did not file the statement of jurisdiction or opening brief, or request an extension of time for either document.

Therefore, IT IS HEREBY ORDERED that the appeal is dismissed, pursuant to HRAP Rule 30.

IT IS FURTHER ORDERED that the appellate clerk shall serve this order on Appellant.

DATED: Honolulu, Hawai'i, March 14, 2017.

Presiding Judge

Associate Judge

Associate Judge