

NO. CAAP-17-0000376

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

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
ALFRED N. SPINNEY, Defendant-Appellant,

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CR. NO. 3PC11100332K)

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Ginoza, Chief Judge, Reifurth and Chan, JJ.)

Upon review of Defendant-Appellant Alfred N. Spinney's (Spinney) appeal in appellate court case number CAAP-17-0000376, it appears that we lack appellate jurisdiction over Spinney's appeal from three interlocutory orders that the Honorable Melvin Fujino entered on April 4, 2017, April 10, 2017, and April 26, 2017, in Circuit Court Criminal No. 3PC11100332K, because all three orders are interlocutory orders that are not eligible for appellate review under Hawaii Revised Statutes (HRS) § 641-11 (2016) in the absence of either an appealable final judgment of conviction or final order of dismissal.

"The right of appeal in a criminal case is purely statutory[.]" State v. Nicol, 140 Hawai'i 482, 485, 403 P.3d 259, 262 (2017) (citation and internal quotation marks omitted). The law that allows appeals from circuit court criminal cases is HRS § 641-11, which provides that "[a]ny party aggrieved by the

judgment of a circuit court in a criminal matter may appeal to the intermediate appellate court, subject to chapter 602, in the manner and within the time provided by the rules of court. The sentence of the court in a criminal case shall be the judgment." Thus, "[u]nder HRS § 641-11, the sentence of the court in a criminal case is the judgment from which an appeal is authorized[,]" and where "[t]here [is] no conviction and sentence in . . . [a] case, there can be no appeal under HRS § 641-11[.]" State v. Kealaiki, 95 Hawai'i 309, 312, 22 P.3d 588, 591 (2001) (internal quotation marks and citations omitted); State v. Ferreira, 54 Haw. 485, 486-87, 510 P.2d 88, 89 (1973) (Dismissing an appeal from a "judgment of conviction [that] does not include any sentence imposed upon the defendant[.]").

In the instant case, Spinney's appeal is premature, and we lack appellate jurisdiction.

Therefore, IT IS HEREBY ORDERED appellate court case number CAAP-17-0000376 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, June 29, 2018.

Chief Judge

Associate Judge

Associate Judge