

NO. CAAP-18-0000109

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
v.
LANCE KAMUELA GOMES, Defendant-Appellant,

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT
(CASE NO. 5CPC-17-0000062)

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

Upon review of the appeal of Defendant-Appellant Lance Gomes (**Gomes**) in appellate court case number CAAP-18-0000109, it appears that we lack appellate jurisdiction over Gomes' appeal apparently from (1) the actions taken and the bench warrant issued by the Honorable Randal G. B. Valenciano on October 12, 2017, (2) the October 25, 2017 actions of a police officer presumably related to the bench warrant, (3) Gomes' arrest on October 28, 2017, presumably on the bench warrant, and (4) Gomes' detention on October 31, 2017, and the January 11, 2018 circuit court oral order reflected in court minutes to set jury trial deadlines. The aforesaid actions or rulings are not eligible for appellate review under Hawaii Revised Statutes (**HRS**) § 641-11 (2016) in the absence of a timely appeal from an appealable final

judgment of conviction or final order of dismissal. Therefore, dismissal of the appeal for lack of jurisdiction is warranted.

The proceedings underlying this appeal involve a criminal complaint by Plaintiff-Appellee State of Hawai'i (**State**) against Gomes for (1) one count of criminal property damage in the third degree in violation of HRS § 708-822 (2014), and (2) one count of criminal trespass in the second degree in violation of HRS § 708-814 (2017). "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). HRS § 641-11 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. Johnston, 63 Haw. 9, 11, 619 P.2d 1076, 1077 (1980); State v. Ferreira, 54 Haw. 485, 486-87, 510 P.2d 88, 89 (1973). In determining whether an order or judgment qualifies for appealability under HRS § 641-11, the Supreme Court of Hawai'i has "focused the inquiry on whether the relevant order terminated the proceedings in the case and left nothing further to be accomplished by the lower court." Nicol, 140 Hawai'i at 492, 403 P.3d at 269.

None of the appealed actions or rulings in appellate court case number CAAP-18-0000109 is independently appealable. The bench warrant is an interlocutory order that did not terminate the proceedings in the case. With respect to any actions and orders contained in the circuit court minutes, "a

minute order is not an appealable order." Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 321 n.3, 966 P.2d 631, 633 n.3 (1998).¹

Therefore, we lack appellate jurisdiction over Gomes' premature appeal. IT IS HEREBY ORDERED that appellate court case number CAAP-18-0000109 is dismissed for lack of appellate jurisdiction.

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

Chief Judge

Associate Judge

Associate Judge

¹ "Generally, the filing of a notice of appeal divests the trial court of jurisdiction over the appealed case." TSA International Limited v. Shimizu Corporation, 92 Hawai'i 243, 265, 990 P.2d 713, 735 (1999) (citations omitted). "The general rule, however, assumes that the notice of appeal is valid under the applicable statutory provisions and procedural rules. Where the notice of appeal is jurisdictionally defective, filing the notice does not transfer jurisdiction from the trial court to the appellate court." State v. Ontiveros, 82 Hawai'i 446, 449, 923 P.2d 388, 391 (citations omitted; emphasis added).