

NO. 30355

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
BRADLEY D.M. PAI, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CR. NO. 09-1-0381K)

ORDER GRANTING MOTION TO DISMISS APPEAL
AND DENYING MOTION TO REFUND FILING FEE
(By: Nakamura, Chief Judge, Foley and Fujise, JJ.)

Upon review of (1) Defendant-Appellant Bradley S.M. Pai's (Appellant Pai) May 6, 2010 (a) motion to dismiss this appeal and (b) motion to refund the filing fee that Appellant Pai paid for this appeal, and (2) the record, it appears Hawaii Revised Statutes (HRS) § 641-11 (Supp. 2009) does not authorize us to assume appellate jurisdiction over Appellant Pai's appeal from the Honorable Elizabeth A. Strance's February 8, 2010 "Order Regarding Defendant's Motion to Dismiss Amended Complaint" (the February 8, 2010 order) because the circuit court did not enter a judgment of conviction with a sentence against Appellant Pai.

"Any party deeming oneself 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 the court." HRS § 641-11. "The sentence of the court in a criminal case shall be the judgment." Id. The circuit court has not entered any sentence against Appellant Pai, and, thus, HRS § 641-11 does not authorize Appellant Pai's appeal at this time. State v. Johnston, 63 Haw. 9, 11, 619 P.2d 1076, 1077 (1980). Absent an

appealable judgment, we lack jurisdiction over Appellant Pai's appeal.

By asserting the instant appeal, Appellant Pai has forced the intermediate court of appeals to utilize its resources to process Appellant Pai's appeal. Therefore, Appellant Pai's request for a refund of his filing fee lacks merit. Accordingly,

IT IS HEREBY ORDERED that Appellant Pai's May 6, 2010 motion to dismiss this appeal is granted, and we dismiss the appeal for lack of jurisdiction.

IT IS FURTHER HEREBY ORDERED that Appellant Pai's May 6, 2010 motion to refund his filing fees for this appeal is denied.

DATED: Honolulu, Hawaii, May 28, 2010.

Chief Judge

Associate Judge

Associate Judge