NO. CAAP-10-0000038

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

STATE OF HAWAIʻI, Plaintiff/Appellant/Cross-Appellee, v.
KENNETH BRAY, Defendant/Appellee/Cross-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIFTH CIRCUIT
(CR. NO. 09-1-0247)

ORDER DISMISSING CROSS-APPEAL IN
APPELLATE COURT CASE NUMBER CAAP-10-0000038
(By: Nakamura, Chief Judge, Leonard and Ginoza, JJ.)

Upon review, pursuant to Hawaii Revised Statutes (HRS) § 641-13(1) (Supp. 2010), we have jurisdiction over Plaintiff/Appellant/Cross-Appellee State of Hawaii's (Appellant State) timely appeal from the Honorable Kathleen N.A. Watanabe's September 2, 2010 "Findings of Fact, Conclusions of Law and Order Granting in Part Defendant's Motion to Dismiss Indictment" (the September 2, 2010 dismissal order). However, we lack statutory authority to assume jurisdiction over Defendant/Appellee/Cross-

Appellant Kenneth Bray's (Cross-Appellant Bray) cross-appeal from the same September 2, 2010 dismissal order.

Rule 4.1(a)(3) of the Hawaiʻi Rules of Appellate Procedure (HRAP) provides that "[i]n criminal cases, the state or the defendant may file a cross-appeal within the time and under the circumstances permitted by this rule if the appeal is otherwise allowed by law." (Emphasis added.) In other words, HRAP Rule 4.1(a)(3) authorizes a cross-appeal only when a statute authorizes the party to obtain appellate review of a particular order or judgment. "In a circuit court criminal case, a defendant may appeal from the judgment of the circuit court, see HRS § 641-11 (1993), from a certified interlocutory order, see HRS § 641-17 (1993), or from an interlocutory order denying a motion to dismiss based on double jeopardy." State v. Kealaiki, 95 Hawaiʻi 309, 312, 22 P.3d 588, 591 (2001) (citation omitted). Cross-Appellant Bray is not asserting his cross-appeal from a judgment pursuant to HRS § 641-11 (Supp. 2010), a certified interlocutory order pursuant to HRS § 641-17 (Supp. 2010), or an interlocutory order denying a motion to dismiss based on double jeopardy. Instead, Cross-Appellant Bray is asserting his cross-appeal from the September 2, 2010 dismissal order. There is no statute that authorizes a criminal defendant to appeal from such an order. Therefore, we lack jurisdiction over Cross-Appellant Bray's cross-appeal from the September 2, 2010 dismissal order. Accordingly,

IT IS HEREBY ORDERED that we dismiss Cross-Appellant Bray's cross-appeal in appellate court case number CAAP-10-

0000038. We have assumed appellate jurisdiction over Appellant State's appeal in appellate court case number CAAP-10-0000038. Therefore, the parties in this appeal shall proceed with filing their respective appellate briefs in Appellant State's appeal in appellate court case number CAAP-10-0000038 pursuant to HRAP Rule 28.

DATED: Honolulu, Hawaiʻi,

Chief Judge

Associate Judge

Associate Judge