

NO. CAAP-11-0000474

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
AARON M. BERNAL, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 10-1-1907)

ORDER DISMISSING DEFENDANT-APPELLANT
AARON M. BERNAL'S MAY 18, 2012 HRAP RULE 40
MOTION FOR RECONSIDERATION OF THE AUGUST 10, 2011
ORDER GRANTING PLAINTIFF-APPELLEE STATE OF HAWAII'S JUNE 22, 2011
MOTION TO DISMISS APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Nakamura, Chief Judge, Foley and Reifurth, JJ.)

Upon review of (1) the August 10, 2011 order granting Plaintiff-Appellee State of Hawaii's (Appellee State) June 22, 2011 motion to dismiss Appeal No. CAAP-11-0000474 for lack of jurisdiction, (2) Defendant-Appellant Aaron M. Bernal's (Appellant Bernal) May 18, 2012 motion for reconsideration of the August 10, 2011 dismissal order pursuant to Rule 40 of the Hawai'i Rules of Appellate Procedure (HRAP), and (3) the record,

we note that Appellant Bernal neither filed his May 18, 2012 HRAP Rule 40 motion for reconsideration, nor obtained special leaving for additional time to file such a motion, within ten days after the filing of the August 10, 2011 dismissal order, which is a direct violation of the ten-day time period that HRAP Rule 40(a) expressly provides. Appellant Bernal also did not apply for certiorari to the supreme court within the ninety-day time period after the filing of the August 10, 2011 dismissal order, as HRAP Rule 40.1(a) requires for such an application. Now more than eight months after the filing of the August 10, 2011 dismissal order, we presently lack appellate jurisdiction to adjudicate the merits of Appellant Bernal's May 18, 2012 HRAP Rule 40 motion for reconsideration of the August 10, 2011 dismissal order in Appeal No. CAAP-11-0000474. Cf. HRAP Rule 36; HRAP Rule 40(a); HRAP Rule 40.1; State v. Harrison, 95 Hawai'i 28, 30, 18 P.3d 890, 892 (2001); Korean Temple v. Concerned Citizens, 107 Hawai'i 371, 382, 114 P.3d 113, 124 (2005). Therefore,

IT IS HEREBY ORDERED that Appellant Bernal's May 18, 2012 HRAP Rule 40 motion for reconsideration of the August 10, 2011 dismissal order is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, May 23, 2012.

Chief Judge

Associate Judge

Associate Judge