

NO. CAAP-14-0001382

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

GERALD VILLANUEVA, Petitioner-Appellant, v.
HAWAII PAROLING AUTHORITY, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(S.P.P. NO. 14-1-0003(2); CR. NO. 96-0078(2))

ORDER GRANTING MOTION TO DISMISS
FOR LACK OF JURISDICTION

(By: Foley, Presiding Judge, Leonard and Reifurth, JJ.)

Upon consideration of the Motion to Dismiss for Lack of Jurisdiction by Respondent-Appellee Hawaii Paroling Authority, filed on February 25, 2015, the attachments thereto, and the files herein, it appears this court lacks appellate jurisdiction over the appeal because there is no final appealable judgment or order. On November 25, 2014, the circuit court issues its Findings of Fact, Conclusions of Law, and Judgment Denying Petitioners Non-Conforming HRPP Rule 40 Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner From Custody which denied Petitioner-Appellant Gerald Villanueva's (Appellant) May 8, 2014 Writ of Habeas Corpus, which was deemed a non-conforming petition, pursuant to Rule 40 of the Hawaii Rules of Penal Procedure (HRPP). On December 16, 2014, the circuit court granted Appellant's Motion for Reconsideration and vacated the

November 25, 2014 Findings of Fact, Conclusions of Law, and Judgment Denying Petitioners Non-Conforming HRPP Rule 40 Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner From Custody.

"The right of appeal in a criminal case is purely statutory and exists only when given by some constitutional or statutory provision." State v. Poohina, 97 Hawai'i 505, 509, 40 P.3d 907, 911 (2002) (citation and internal quotation marks omitted). Pursuant to HRS § 641-11 and "HRPP [Rule] 40(h), appeals from proceedings for post-conviction relief may be made from a judgment entered in the proceeding and must be taken in accordance with Rule 4(b) of the Hawai'i Rules of Appellate Procedure (HRAP)." Grattafiori v. State, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995) (internal quotation marks and brackets omitted). As Appellant's motion for reconsideration was granted, at the time Appellant filed an appeal, there was no final appealable judgment or order from which to appeal. Therefore, this court lacks appellate jurisdiction.

IT IS HEREBY ORDERED that the Motion to Dismiss for Lack of Jurisdiction is granted. The appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, March 6, 2015.

Presiding Judge

Associate Judge

Associate Judge