NO. 30596

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

CHRIS GRINDLING, Petitioner-Appellant, v.
STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
WAILUKU DIVISION
(CASE NO. D.C. - S.P. 09-1-0003)

ORDER DENYING OCTOBER 21, 2010 MOTION TO
DISMISS APPEAL FOR LACK OF JURISDICTION OR, IN
THE ALTERNATIVE, MOTION TO STRIKE OPENING BRIEF
(By: Fujise, Presiding Judge, Reifurth and Ginoza, JJ.)

Upon review of (1) Respondent-Appellee State of Hawaii's (Appellee State) October 21, 2010 motion to dismiss for lack of jurisdiction or, in the alternative, motion to strike opening brief (October 21, 2010 motion), (2) the November 3, 2010 memorandum that Petitioner-Appellant Chris Grindling (Appellant Grindling), pro se, filed in opposition to Appellee State's October 21, 2010 motion, and (3) the record, we deny Appellee State's October 21, 2010 motion.

Appellant Grindling sought post-conviction relief from a district court judgment of conviction pursuant to Rule 40 of the Hawaiʻi Rules of Penal Procedure (HRPP). Appellant Grindling has appealed from the Honorable Rhonda I.L. Loo's May 17, 2010

"Order Denying Petitioner's Motion to Transfer Petition to Vacate, Set Aside or Correct Judgment to Circuit Court and Dismissing Petitioner's Petition to Vacate, Set Aside or Correct Judgment" (the May 17, 2010 district court order). Appellee State argues that this court lacks appellate jurisdiction because Appellant Grindling's appeal from the May 17, 2010 district court order was untimely under Rule 4(b) of the Hawai‘i Rules of Appellate Procedure (HRAP). We note that, although the file-stamped date of Appellant Grindling's notice of appeal is July 7, 2010, the district court clerk stamped Appellant Grindling's notice of appeal with a receipt date of June 3, 2010.

"[P]ursuant to HRAP Rule 4(b), an appeal from an order denying post-conviction relief must either be filed within thirty days after the entry of the order denying the HRPP Rule 40 petition or, in the alternative, after the announcement but before the entry of the order." Grattafiori v. State, 79 Hawai‘i 10, 13, 897 P.2d 937, 940 (1995). Although the July 7, 2010 file-stamped date on Appellant Grindling's notice of appeal conflicts with the district court clerk's June 3, 2010 stamped date of receipt for Appellant Grindling's notice of appeal, the date on which the district court received the document prevails over the subsequent file-stamped date that the court eventually put on the document. Cf. Doe v. Doe, 98 Hawai‘i 144, 151, 44 P.3d 1085, 1092 (2002). Thus, the June 3, 2010 effective date of Appellant Grindling's notice of appeal was within the thirty-day time period after entry of the May 17, 2010 district court order, as HRAP Rule 4(b) required. Therefore, Appellant Grindling's appeal is timely.

Appellee State alternatively moves this court to strike Appellant Grindling's opening brief because it does not conform to HRAP Rule 28(b). Appellant Grindling is not an attorney, but, instead, a pro se prisoner. In light of these circumstances, we deny Appellee State's alternative motion to strike Appellant Grindling's opening brief. Accordingly,

IT IS HEREBY ORDERED that Appellee State's October 21, 2010 motion is denied.

DATED: Honolulu, Hawaiʻi, November 24, 2010.

Presiding Judge

Associate Judge

Associate Judge