NO. CAAP-11-0001073

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

STATE OF HAWAIʻI, Plaintiff-Appellee, v.
RAYMOND GONSALVES, JR., Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
WAIʻANAE DIVISION
(Case Nos. 1DTI-06-012226 and 1DTI-07-109698)

SUMMARY DISPOSITION ORDER
(By: Fujise, Presiding Judge, Reifurth and Ginoza, JJ.)

Pro se Defendant-Appellant Raymond Gonsalves, Jr., (Gonsalves) appeals from the District Court of the First Circuit, Waiʻanae Division's (District Court)[1] December 12, 2011 order denying Gonsalves's Motion to Dismiss All Charges With Prejudice Case Nos. 1DTI-07-109698 and 1DTI-06-012226 (Motion to Dismiss).

On appeal, Gonsalves appears to argue that the District Court erred because: (1) it violated his right, under the Sixth Amendment to the U.S. Constitution, to confront adverse witnesses; (2) it violated his right, under the Fifth or Sixth Amendment to the U.S. Constitution, to be represented by counsel; (3) it violated his right, under the Sixth Amendment to the U.S. Constitution, to a public trial by an impartial jury; and (4) it failed to dismiss the case for unnecessary delay.

[1] The Honorable Lono J. Lee presided.

Based on a careful review of the issues raised and arguments made by the parties, the record, and the applicable authority, we resolve Gonsalves's appeal as follows:

Initially we consider whether we have jurisdiction to consider Gonsalves's appeal. In District Court case number 1DTI-07-109698, no judgment appears in the record. Therefore, the citation in District Court case number 1DTI-07-109698 appears to still be pending before the District Court. Gonsalves cannot invoke this court's appellate jurisdiction to review any orders in District Court case number 1DTI-07-109698 until the District Court enters an appealable final order or judgment that ends the proceedings in District Court case number 1DTI-07-109698, as Hawaii Revised Statutes § 641-1(a) (Supp. 2013) requires for appealability.

By contrast, default judgment was entered in District Court case number 1DTI-06-012226. However, Gonsalves did not appeal from this July 25, 2007 default judgment. Instead, on December 20, 2011, Gonsalves timely appealed from the December 12, 2011 Order Denying Motion to Dismiss (Order), finally disposing of his Motion to Dismiss in both District Court case numbers 1DTI-06-012226 and 1DTI-07-109698. The Order is, in a literal sense, a post-judgment order as to District Court number 1DTI-06-012226 and finally disposed of Gonsalves's Motion to Dismiss. See Casumpang v. ILWU, Local 142, 91 Hawaiʻi 425, 426, 984 P.2d 1251, 1252 (1999) ("When a written judgment, order, or decree ends the litigation by fully deciding all rights and liabilities of all parties, leaving nothing further to be adjudicated, the judgment, order, or decree is final and appealable.") Thus, we have jurisdiction to consider Gonsalves's appeal from the Order as to District Court case number 1DTI-06-012226.

We conclude that the District Court properly denied Gonsalves's motion to dismiss. Hawaiʻi Civil Traffic Rules (HCTR) Rule 18 provides that "[n]o post judgment request for relief will be allowed except for a motion to set aside default

judgment, motion to convert monetary assessment to community service, motion to amend judgment, or a request for trial after a contested hearing." Even looking at the substance of Gonsalves's motion rather than its title, Anderson v. Oceanic Props., Inc., 3 Haw. App. 350, 355, 650 P.2d 612, 617 (1982) ("it is the substance of the pleadings that controls, not its nomenclature"), we cannot say that his Motion to Dismiss invoked any of the types of relief provided for in HCTR Rule 18. Rather, for the various reasons he stated, he sought a dismissal with prejudice of these traffic infraction cases. Thus, Gonsalves's motion was unauthorized and the District Court correctly denied the motion. See State v. Ranger Ins. Co., 83 Hawaiʻi 118, 124 n.5, 925 P.2d 288, 294 n.5 (1996) (in construing bail bond forfeiture statute noting that the trial court was "without power to consider" a motion filed after the statutorily defined deadline.)

Therefore, we affirm the District Court of the First Circuit, Waiʻanae Division's December 12, 2011 Order Denying Motion to Dismiss as to District Court case number 1DTI-06-012226. We dismiss Gonsalves's appeal as to District Court case number 1DTI-07-109698.

DATED: Honolulu, Hawaiʻi, October 22, 2014.

On the briefs:

Raymond Gonsalves,
Defendant-Appellant, pro se.

Presiding Judge

Sonja P. McCullen,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Associate Judge

Associate Judge