

NO. CAAP-14-0001319

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

DONALD B. MARKS, Petitioner-Appellant,
v.
STATE OF HAWAII, Respondent-Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P.P. NO. 14-1-0008)

ORDER
DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
AND
DISMISSING AS MOOT ALL PENDING MOTIONS
(By: Foley, Presiding Judge, Leonard and Ginoza, JJ.)

Upon review of the record, it appears that we lack appellate jurisdiction as to Petitioner-Appellant Donald B. Marks's (Appellant Marks) appeal from the Honorable Richard K. Perkins's October 21, 2014 order in S.P.P. No. 14-1-0008, which denied Appellant Marks's April 29, 2014 motion to withdraw his plea of no contest to murder in the second degree pursuant to Rule 32 of the Hawai'i Rules of Penal Procedure (HRPP), because the October 21, 2014 order did not finally determine and end the proceedings that Appellant Marks initiated in S.P.P. No. 14-1-0008. Specifically, Marks also filed in S.P.P. No. 14-1-0008 a March 7, 2014 motion for correction of illegal sentence pursuant to HRPP Rule 35.

"According to 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).

In the instant case, the circuit court has not yet entered a final order or final judgment that resolves all of the issues in both Appellant Marks's March 7, 2014 motion and Appellant Marks's April 29, 2014 motion. In S.P.P. No. 14-1-0008, the circuit court's October 21, 2014 order resolves only Appellant Marks's April 29, 2014 motion, and the October 21, 2014 order clearly indicates that the circuit court retained this matter for a scheduled hearing on the merits of Appellant Marks's March 7, 2014 motion.

Absent an appealable final order or appealable final judgment, Appellant Marks's appeal is premature, and we lack appellate jurisdiction. Therefore,

IT IS HEREBY ORDERED that appellate court case number CAAP-14-0001319 is dismissed for lack of appellate jurisdiction without prejudice to any party's right to assert a timely appeal from a future final order or final judgment in S.P.P. No. 14-1-0008.

IT IS FURTHER HEREBY ORDERED that all pending motions in CAAP-14-0001319 are dismissed as moot.

DATED: Honolulu, Hawai'i, April 16, 2015.

Presiding Judge

Associate Judge

Associate Judge