

NO. CAAP-15-0000481

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

STATE OF HAWAI'I, Plaintiff-Appellant, v.
XAVIER J. CORTEZ, JR., aka PEE WEE, Defendant-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CR. NO. 15-1-0043)

ORDER

(1) DISMISSING THE APPEAL FOR LACK OF APPELLATE JURISDICTION;
AND
(2) DISMISSING AS MOOT THE SEPTEMBER 29, 2015
MOTION FOR STAY OF PROCEEDINGS PENDING COMPLETION OF APPEAL
(By: Nakamura, C.J., Fujise and Reifurth, JJ.)

Upon review of the records in CAAP-15-0000481, it appears that this court lacks appellate jurisdiction. Plaintiff-Appellant the State of Hawai'i (State) appeals from the (1) July 9, 2015 Findings of Fact, Conclusions of Law and Order Granting in Part and Denying in Part State of Hawai'i Motion in Limine #3 and Defendant's First Motion in Limine and (2) July 9, 2015 Findings of Fact, Conclusions of Law and Order Denying State of Hawai'i's Motion for Reconsideration of Court's Order Denying in Part State's Motion in Limine #3. The Circuit Court's pretrial order excluded testimony of a decedent's statements to her therapist because it was hearsay, was not otherwise admissible, and was more prejudicial than probative.

"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). Hawaii Revised Statutes (HRS) § 641-13 governs appeals by the State in criminal cases and does not explicitly authorize the State's appeal from the order denying its motion in limine. See State v. Miura, 6 Haw. App. 501, 503, 730 P.2d 917, 919-20 (1986) (concluding that the State's appeal from the denial of its motion in limine was not authorized under HRS § 641-13(7)). In addition, the State does not cite any statute authorizing an appeal from the denial of its motion in limine.

Therefore, this court lacks appellate jurisdiction over this appeal.

IT IS HEREBY ORDERED that the appeal is dismissed for lack of appellate jurisdiction.

IT IS FURTHER ORDERED that the State's September 29, 2015 Motion for a Stay of Proceedings Pending Completion of Appeal (dkt# 27) is dismissed as moot.

DATED: Honolulu, Hawai'i, October 12, 2015.

Chief Judge

Associate Judge

Associate Judge