

NO. CAAP-16-0000173

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
WAYNE R. MATSUI, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CR. NO. 13-1-000343)

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Foley, Presiding Judge, Leonard and Ginoza, JJ.)

Upon review of the record in CAAP-16-0000173, it appears that this court lacks appellate jurisdiction over the appeal. Defendant-Appellant Wayne R. Matsui (Appellant) appeals from the Judgment of Conviction and Sentence, filed on December 17, 2013, in the Circuit Court of the Second Circuit. Appellant, pro se, filed a Notice of Appeal on March 16, 2016, more than 2 years after entry of the December 17, 2013 Judgment of Conviction and Sentence. Therefore the appeal is untimely. HRAP Rule 4(b). "In criminal cases, [the supreme court] ha[s] made exceptions to the requirement that notices of appeal be timely filed." State v. Irvine, 88 Hawai'i 404, 407, 967 P.2d 236, 239 (1998).

Specifically, the supreme court has permitted belated appeals under two sets of circumstances: (1) when defense counsel has inexcusably or ineffectively failed to pursue a defendant's appeal from a criminal conviction in the first instance, or (2) when the lower court's decision was unannounced and no notice of the entry of judgment was ever provided. Id. Appellant has not demonstrated that either exception applies to this case. Accordingly, this court lacks appellate jurisdiction over the appeal.

IT IS HEREBY ORDERED that the appeal is dismissed for lack of appellate jurisdiction without prejudice to Appellant filing a Petition, pursuant to Rule 40 of the Hawaii Rules of Penal Procedure.

DATED: Honolulu, Hawai'i, May 17, 2016.

Presiding Judge

Associate Judge

Associate Judge