

NO. CAAP-16-0000083

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellant, v.
JAMES RANDALL AKIRA BUSCHE, JR., Defendant-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CR. NO. 15-1-0228K)

ORDER DISMISSING THE APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Nakamura, C.J., Fujise and Reifurth, JJ.)

Upon review of the record in CAAP-16-0000083, it appears this court lacks appellate jurisdiction because the appeal was untimely. Plaintiff-Appellant State of Hawaii (State) appeals from the Findings of Fact, Conclusions of Law and Order Granting Defendant's Motion to Suppress Evidence, filed on December 9, 2015 and Order Denying State's Motion to Reconsider, filed on February 8, 2016 in Circuit Court of the Third Circuit.

A notice of appeal must be filed within 30 days after entry of the judgment or order appealed from. Rule 4(b)(1) of the Hawaii Rules of Appellate Procedure (HRAP). The State received an extension to file a Notice of Appeal, pursuant to HRAP Rule 4(b)(5). Under HRAP Rule 4(b)(5) the time to file a

notice of appeal may be extended up to 30 days. The State filed a Notice of Appeal on February 12, 2016, 65 days after entry to the December 9, 2015 Findings of Fact, Conclusions of Law and Order Granting Defendant's Motion to Suppress Evidence.

"Under Rule 4(b) of HRAP, only a timely motion in arrest of judgment or for a new trial is a tolling motion." State v. Brandimart, 68 Haw. 495, 497, 720 P.2d 1009, 1010 (1986). A motion for reconsideration is not a tolling motion under HRAP Rule 4(b). Id. Thus, the appeal is untimely. HRAP Rule 4(b).

"[C]ompliance with the requirement of the timely filing of a notice of appeal is jurisdictional." Id. at 497, 720 P.2d at 1010. "We must dismiss an appeal on our own motion if we lack jurisdiction." Id. Therefore, this court lacks appellate jurisdiction over the appeal from the December 9, 2015 the Findings of Fact, Conclusions of Law and Order Granting Defendant's Motion to Suppress Evidence, as well as the February 8, 2016 Order Denying State's Motion to Reconsider. Id. at 496-97, 720 P.2d at 1009-10.

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

DATED: Honolulu, Hawai'i, September 29, 2016.

Chief Judge

Associate Judge

Associate Judge