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Intermediate Court of Appeals
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NO. CAAP-15-0000673

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
ANTHONY M. PICKENS, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 14-1-0526)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, Fujise and Reifurth, JJ.)

Defendant-Appellant Anthony M. Pickens (Pickens) appealed from the Judgment of Conviction and Probation Sentence (Judgment) entered by the Circuit Court of the First Circuit¹ on August 18, 2015. Pickens was convicted of Terroristic Threatening in the First Degree in violation of Hawaii Revised Statutes (HRS) § 707-716(1)(e) (2014) and Assault Against a Law Enforcement Officer in the Second Degree in violation of HRS § 707-712.6(1) (2014) and ordered to serve terms of probation for each count under certain terms and conditions.

On May 27, 2016, Plaintiff-Appellee State of Hawaii (State) filed a suggestion of death, notifying this court that the State had reason to believe Pickens had died. Pursuant to this court's order, Pickens's death was confirmed by his appellate counsel (Counsel) on October 25, 2016. Counsel also represented that neither Pickens's family nor Counsel intend to seek substitution for Pickens as a party to this appeal. Counsel further represented that Pickens's probation officer was unable

¹ The Honorable Rom A. Trader presided.

to contact the complaining witness in this case and that, according to the Presentence Diagnosis and Report the State took the position that restitution "was not applicable."

Insofar as the representatives of both parties agree Pickens has died during the pendency of his appeal, no motion for substitution has been filed by any party, there is no order for restitution at issue, and the State has filed no opposition to dismissal of the underlying criminal case, we exercise our discretion to dismiss the appeal as moot, vacate the Judgment, and dismiss the underlying criminal case. See State v. Makaila, 79 Hawai'i 40, 45, 897 P.2d 967, 972 (1995).

Accordingly, IT IS HEREBY ORDERED that this appeal is dismissed as moot, the Circuit Court of the First Circuit's Judgment entered on August 18, 2015, is vacated, and the indictment against Pickens in this case is dismissed.

DATED: Honolulu, Hawai'i, November 22, 2016.

On the briefs:

James S. Tabe,
Deputy Public Defender,
for Defendant-Appellant.


Presiding Judge

Chad Kumagai,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.


Associate Judge


Associate Judge