

NO. CAAP-16-0000681

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
DONALD NICOL, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 14-1-1642)

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

Upon review of the record on appeal, it appears that this court lacks appellate jurisdiction because there is no "judgment" in the record on appeal as defined in the Hawaii Revised Statutes (**HRS**) § 641-11 (2010). Defendant-Appellant Donald Nicol (**Appellant**) appeals from an "Order Granting in Part and Denying in Part [Appellant's] Motion to Dismiss Indictment with Prejudice," filed on September 16, 2016, in the Circuit Court of the First Circuit.

Appellant purports to appeal pursuant to HRS § 641-11, which provides in pertinent part, "[a]ny party aggrieved by the judgment of a circuit court in a criminal matter may appeal to

the intermediate appellate court, subject to chapter 602, in the manner and within the time provided by the rules of court. The sentence of the court in a criminal case shall be the judgment."

HRS § 641-11 (emphasis added).

This case was dismissed without prejudice for violation of Rule 48 of the Hawai'i Rules of Penal Procedure and, therefore, no sentence has been imposed.

Therefore, Appellant may not appeal pursuant to HRS § 641-11.

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

DATED: Honolulu, Hawai'i, January 11, 2017.

Chief Judge

Associate Judge

Associate Judge