

NO. CAAP-16-0000385

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
ROBERTA W. WILBORN, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CASE NOS. 1DCC-15-0005130 and 1DCW-16-0001230)

ORDER DISMISSING THE APPEAL

(By: Leonard, Presiding Judge, Reifurth and Ginoza, JJ.)

Upon review of the record, it appears that:

(1) On May 9, 2016, Defendant-Appellant Roberta Wilborn (Appellant), pro se, filed a notice of appeal;

(2) On July 1, 2016, the district court clerk filed the record on appeal;

(3) On November 9, 2016, after Appellant defaulted on the statement of jurisdiction and opening brief, the court temporarily remanded this case to the district court to determine whether the deputy public defender who represented Appellant in the underlying case continued to represent Appellant on appeal, or whether Appellant should be allowed to proceed on appeal pro se. The court, among other things, extended the statement of

jurisdiction and opening brief due dates, and cautioned Appellant that further default of the statement of jurisdiction or opening brief may result in the appeal being dismissed, pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rules 12.1(e) and 30;

(4) The appellate clerk mailed the November 9, 2016 order to Appellant at the address listed on the notice of appeal and record on appeal but the United States Postal Service returned it as "Unclaimed," and "Unable to Forward." Appellant failed to provide the appellate clerk with a current address. See HRAP Rule 25(f);

(5) The court subsequently granted two motions by the district court to extend the deadline to comply with the November 9, 2016 order, and sua sponte extended the statement of jurisdiction and opening brief deadlines to February 16, 2017, and March 20, 2017, respectively. Again, the court cautioned Appellant that further default of the statement of jurisdiction or opening brief may result in the appeal being dismissed, pursuant to HRAP Rules 12.1(e) and 30;

(6) The appellate clerk mailed one of the orders, filed December 29, 2016, to Appellant at the address listed on the notice of appeal and record on appeal, and also to a new address Appellant provided on a so-called "Amended Notice of Appeal," filed November 22, 2016. The United States Postal Service returned the former as "Not Deliverable as Addressed" and "Unable to Forward," but did not return the latter. The appellate clerk did not mail the second order, filed December 30, 2016, to Appellant;

(7) On January 27, 2017, the district court clerk filed what appears to be a supplemental record on appeal with a district court order entered the same day that allowed the public defender to withdraw as counsel, and Appellant to proceed on appeal pro se;

(8) Appellant did not file the statement of jurisdiction or opening brief, or request an extension of time;

(9) On April 11, 2017, the appellate clerk filed a second default notice, informing Appellant that the time for filing the statement of jurisdiction and opening brief had

expired and, pursuant to HRAP Rule 30, the matter would be called to the court's attention on April 21, 2017, for appropriate action, which could include dismissal of the appeal, and Appellant could seek relief from default by motion;

(10) The appellate clerk mailed the second default notice to Appellant's new address listed in the November 22, 2016 amended notice of appeal, and the supplemental record on appeal filed by the district court clerk. No return mail was received; and

(11) Appellant took no further action in this appeal.

Therefore, IT IS HEREBY ORDERED that the appeal is dismissed.

DATED: Honolulu, Hawai'i, May 8, 2017.

Presiding Judge

Associate Judge

Associate Judge