

NO. CAAP-17-0000057

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

TYRONE K.N. GALDONES, Petitioner-Appellant, v.
STATE OF HAWAII, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P.P. NO. 16-1-0012; CR. NO. 99-0-1690)

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

Upon review of the record in CAAP-17-0000057, it appears that this court lacks appellate jurisdiction over the appeal because the appeal was untimely.

Petitioner-Appellant Tyrone K.N. Galdones (Appellant) appeals from the "Order Denying Without a Hearing Petitioner Tyrone Galdones' Third Petition for Post-Conviction Relief," filed on December 7, 2016 in the Circuit Court of the First Circuit. Pursuant to Hawaii Revised Statutes § 641-11 and Hawai'i Rules of Penal Procedure ("HRPP") Rule 40(h), "appeals from proceedings for post-conviction relief may be made from a judgment entered in the proceeding and must be taken in accordance with Rule 4(b) of the Hawai'i Rules of Appellate Procedure (HRAP)." Grattafiori v. State, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995) (internal quotation marks and brackets omitted). "[P]ursuant to HRAP Rule 4(b), an appeal from an order denying post-conviction relief must either be filed within thirty days after the entry of the order denying the HRPP Rule 40

petition or, in the alternative, after the announcement but before the entry of the order." Id.

Therefore, Appellant had until January 6, 2017 to file a notice of appeal. Appellant, however, did not file a notice of appeal until February 3, 2017. Even considering that Appellant dated his notice of appeal on January 26, 2017, the notice of appeal was untimely.

"[W]e must dismiss an appeal on our motion if we lack jurisdiction." Id. (quoting State v. Brandimart, 68 Haw. 495, 497, 720 P.2d 1009, 1010 (1986)). Accordingly, the Intermediate Court of Appeals does not have appellate jurisdiction over the December 7, 2016 Order Denying Without a Hearing Petitioner Tyrone Galdones' Third Petition for Post-Conviction Relief.

Therefore, IT IS HEREBY ORDERED that the appeal in CAAP-17-0000057 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, May 3, 2017.

Presiding Judge

Associate Judge

Associate Judge