

NO. CAAP-17-0000749

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellant,
v.
KAMAHAO HOLZGROVE, Defendant-Appellee.

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT
(CASE NO. 3FFC-17-0000181)

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Fujise, Presiding Judge, Reifurth and Chan, JJ.)

Upon review of the record in this appeal, and the record in the underlying family-court criminal case, case number 3FFC-17-0000181, it appears that we lack appellate jurisdiction over Plaintiff-Appellant State of Hawaii's (**State's**) appeal from the Family Court of the Third Circuit's (**family court's**) September 26, 2017 "Order Granting in Part, Denying in Part, State's Motion to Modify Terms of Probation" (**Order**), under Hawaii Revised Statutes (**HRS**) § 641-13(6).

"The right to an appeal is strictly statutory." State v. Ontiveros, 82 Hawai'i 446, 449, 923 P.2d 388, 391 (1996) (citation omitted). HRS § 571-54 (2006) provides that "[a]n interested party aggrieved by any order or decree of the court may appeal to the intermediate appellate court for review of questions of law and fact upon the same terms and conditions as in other cases in the family court and review shall be governed by chapter 602[.]" HRS § 602-57(1) (2016) states that the

intermediate court of appeals has jurisdiction "[t]o hear and determine appeals from any court . . . when appeals are allowed by law[.]"

HRS § 641-13(6) does not apply to authorize the appeal. § 641-13(6) (2016) provides that the State may appeal, in any criminal case, "[f]rom the sentence, on the ground that it is illegal." An illegal sentence is one "which the court is not authorized to impose." State v. Kahalewai, 71 Haw. 624, 625, 801 P.2d 558, 560 (1990). The May 24, 2017 Judgment entered by the family court was authorized by HRS § 706-605(7) (2006). Therefore, the Judgment was not illegal.

In any event, the State's October 25, 2017 Notice of Appeal (Notice of Appeal) was not filed within thirty days after entry of the May 24, 2017 Judgment of Conviction and Probation Sentence, and no tolling, or other motion to extend the time to file the Notice of Appeal appears in the record. Therefore, the Notice of Appeal is untimely as to the Judgment. See Rule 4(b)(1) of the Hawai'i Rules of Appellate Procedure.

"The Prosecution's right of appeal in criminal cases is limited to those instances set forth in HRS § 641-13." State v. Fukusaku, 85 Hawai'i 462, 490, 946 P.2d 32, 60 (1997) (citations, internal quotation marks, and brackets omitted). No other subsection of HRS § 641-13 authorizes the appeal.

Therefore, IT IS HEREBY ORDERED that the appeal in case number CAAP-17-0000749 is dismissed for lack of jurisdiction.

DATED: Honolulu, Hawai'i, August 31, 2018.

Presiding Judge

Associate Judge

Associate Judge