

NO. CAAP-19-0000079

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
v.
CARY CANTERE, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CASE NO. 1PC141000181)

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Ginoza, Chief Judge, Reifurth and Hiraoka, JJ.)

Upon review of this appeal filed by Defendant-Appellant Cary Cantere (Cantere), pro se, from the Honorable Dexter D. Del Rosario's June 3, 2015¹ judgment of conviction in circuit court criminal case number 1PC141000181, it appears that we lack appellate jurisdiction because Cantere's January 23, 2019 notice of appeal is untimely under Rule 4(b)(1) of the Hawaii Rules of Appellate Procedure (HRAP).

As a result of Cantere's plea of no contest to Plaintiff-Appellee State of Hawaii's February 4, 2014 indictment for three counts of sexual assault in the third degree in violation of Hawaii Revised Statutes (HRS) § 707-732 (2014), the circuit court entered both a June 3, 2015 judgment of conviction and an October 9, 2015 amended judgment of conviction on all three counts, which were immediately appealable pursuant to HRS

¹ Cantere's letter dated January 23, 2019, which we deem to be his notice of appeal, references a June 6, 2015 sentencing date. We understand this to refer to the June 3, 2015 judgment of conviction in 1PC141000181.

§ 641-11 (2016). HRAP Rule 4(b)(1) requires that, "[i]n a criminal case, the notice of appeal shall be filed within 30 days after entry of the judgment or order appealed from." The issue whether an appellant "compli[ed] with the requirement of the timely filing of a notice of appeal, as set forth in HRAP Rule 4(b)(1), is jurisdictional." State v. Bohannon, 102 Hawai'i 228, 234, 74 P.3d 980, 986 (2003) (citations, internal quotation marks, and original brackets omitted). Because Cantere is currently a pro se prisoner, we utilize Cantere's date of signature in his notice of appeal, January 23, 2019, as the earliest possible date on which he tendered his notice of appeal to prison officials for mailing. See Setala v. J.C. Penney Company, 97 Hawai'i 484, 485, 40 P.3d 886, 887 (2002) (deeming the effective date of a pro se prisoner's notice of appeal to be the day on which he tendered it to prison officials). But, regardless of whether we acknowledge the entry of the June 3, 2015 judgment of conviction or the October 9, 2015 amended judgment of conviction as the event that triggered the thirty-day time period under HRAP Rule 4(b)(1) for filing a notice of appeal, the January 23, 2019 effective date of Cantere's notice of appeal is untimely because he waited more than three years to assert his appeal. Absent a timely appeal, we lack appellate jurisdiction.

Therefore, IT IS HEREBY ORDERED that appellate court case number CAAP-19-0000079 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, June 25, 2019.

Chief Judge

Associate Judge

Associate Judge