

NO. CAAP-19-0000371

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
MATTHEW A. MELLOW, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(CASE NO. 1DTI-19-084061)

ORDER DISMISSING APPEAL

(By: Reifurth, Presiding Judge, Chan and Hiraoka, JJ.)

Upon review of the record, it appears that:

(1) On May 2, 2019, Defendant-Appellant Matthew A. Mellow (Mellow), pro se, filed the notice of appeal without the fees required by Hawai'i Rules of Appellate Procedure (HRAP) Rule 3(a);

(2) On May 15, 2019, the court construed the document Mellow filed in this appeal on May 10, 2019, as a motion for leave to proceed on appeal *in forma pauperis*, and denied it without prejudice to Mellow seeking relief in the underlying case, No. 1DTI-19-084061, or otherwise demonstrating compliance with HRAP Rule 24(a). The court ordered that within ten days from the order, Mellow shall pay the filing fees or file in the

underlying case a motion for leave to proceed on appeal *in forma pauperis*. The court further ordered that, among other things, if Mellow filed in the underlying case a motion for leave to proceed on appeal *in forma pauperis*, then the district court shall determine and enter a written order on the motion within fifteen days, and if the district court denied the motion, then within ten days after the district court entered its order, Mellow shall either file in this court a motion for leave to proceed on appeal *in forma pauperis* that complies with HRAP Rule 24(a) or pay the filing fees. The court cautioned Mellow that "[f]ailure to file in this court a motion for leave to proceed in appeal *in forma pauperis* or pay the filing fees may result in the appeal being dismissed. See HRAP Rule 24(c);"¹

(3) On May 16, 2019, Mellow filed in the underlying case a motion for leave to proceed on appeal *in forma pauperis*;

(4) On May 23, 2019, the district court denied the motion for leave to proceed on appeal *in forma pauperis*; and

(5) More than ten days have passed since the district court denied Mellow's motion for leave to proceed on appeal *in forma pauperis*, and Mellow has not paid the filing fees or taken any further action in this appeal. Consistent with the May 15,

¹ HRAP Rule 24(c) states:

(c) Effect of denial of motion for leave to proceed in forma pauperis. If the motion to proceed in forma pauperis is denied the movant shall, within 10 days after the denial of such a motion, pay all unpaid filing fees and shall give security for costs. Failure of the unsuccessful movant to pay the unpaid filing fees or to give security for costs shall not affect the validity of the appeal, but is ground for such action as the appellate court having jurisdiction over the appeal deems appropriate, and may include dismissal of the appeal.

2019 order and HRAP Rule 24(c), dismissal of the appeal is warranted.

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

DATED: Honolulu, Hawai'i, June 7, 2019.

Presiding Judge

Associate Judge

Associate Judge