

NO. CAAP-19-0000402

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.  
DAVID L. MOORE, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CR. NO. 1CPC-17-0001707)

ORDER GRANTING JULY 15, 2019 MOTION TO  
DISMISS APPEAL FOR LACK OF APPELLATE JURISDICTION  
(By: Ginoza, Chief Judge, Fujise and Leonard, JJ.)

Upon review of (1) Defendant-Appellant David L. Moore's (David Moore) July 15, 2019 motion to dismiss his appeal for lack of appellate jurisdiction, (2) the lack of any memorandum by Plaintiff-Appellee State of Hawaii (the State) in response to the motion, and (3) the record, it appears that we lack appellate jurisdiction over David Moore's appeal from the Honorable Edward H. Kubo, Jr.'s, May 10, 2019 judgment of conviction for criminal contempt of court in violation of subsections (1)(g) and (3)(a) of Hawaii Revised Statutes (HRS) § 710-1077 (2014 & Supp. 2018).

Although HRS § 641-11 (2016) governs most defendants' appeals from circuit court criminal cases, "HRS § 710-1077(5) governs the procedures for an appeal of a conviction of criminal contempt, pursuant to HRS § 710-1077(3)(a)[.]" State v. Tierney, 92 Hawaii 178, 179, 989 P.2d 262, 263 (1999). HRS § 710-1077(5) provides that "[a] judgment, sentence, or commitment under subsection (3)(a) shall not be subject to review by appeal, but

shall be subject to review in an appropriate proceeding for an extraordinary writ or in a special proceeding for review."

(Emphasis added). Consequently, when a party is "convicted of and sentenced for criminal contempt under subsection (3)(a), HRS § 710-1077(5) requires that [the aggrieved party] seek review in a proceeding for an extraordinary writ or special proceeding for review." Tierney, 92 Hawai'i at 179, 989 P.2d at 263 (citations omitted).

Therefore, IT IS HEREBY ORDERED that David Moore's motion to dismiss his appeal is granted, and appellate court case number CAAP-19-0000402 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, September 30, 2019.

Chief Judge

Associate Judge

Associate Judge