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Supreme Court  
SCWC-18-0000301  
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IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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In re Sanctions Against EARLE A. PARTINGTON and  
ROBERT PATRICK MCPHERSON,  
Petitioners/Real Parties in Interest,

in

STATE OF HAWAI'I,  
Respondent/Plaintiff-Appellee,

vs.

MAGGIE KWONG,  
Petitioner/Defendant-Appellant.

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SCWC-18-0000301

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS  
(CAAP-18-0000301; CASE NO. 1DTA-17-02539)

March 5, 2020

CONCURRING AND DISSENTING OPINION BY WILSON, J.

It is undisputed that attorneys for Maggie Kwong ("Kwong")—Earle A. Partington and R. Patrick McPherson—incorrectly represented in their June 8, 2018 Statement of Jurisdiction that the Intermediate Court of Appeals ("ICA") had

jurisdiction over Kwong's appeal. It is also undisputed that the mistake was brought to the attention of the ICA by the attorneys approximately one month later on July 11, 2018 per the filing of the Amended Statement of Jurisdiction wherein the ICA was informed that because a final judgment had not yet been entered, the ICA could not decide the appeal.<sup>1</sup> And it is

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<sup>1</sup> Petitioner/Defendant-Appellant's Amended Statement of Jurisdiction provided:

This is an appeal from the judgment of the District Court in a criminal/traffic case. The jurisdiction of the Intermediate Court of Appeals of the State of Hawaii is invoked under H.R.S. §§602-57(1) and 641-12.

. . .

The Judgment filed below in the District Court of the First Circuit on March 14, 2018 . . . is not a final judgment. Sentencing was not completed on March 14, 2018, as final sentencing on Defendant's license revocation was not held until April 13, 2018, ten days after the notice of appeal was filed . . . . No final judgment has ever been filed. Defendant's Notice of Appeal was timely filed pursuant to Rule 4(b)(1) of the Hawaii Rules of Appellate Procedure on April 3, 2018[.]

. . .

The Judgment below did not dispose of all the claims against all the parties as sentencing was not complete.

. . .

Defendant was charged in a written complaint with Operating a Vehicle Under the Influence of an Intoxicant in violation of H.R.S. §291E-61(a) on June 23, 2017[.]. Defendant was found guilty following trial on the same date and on the same date was sentenced by the Honorable William M. Domingo to a \$150 fine, assessments, a 14-hour driving education class, and an alcohol assessment[.]. Further sentencing as to Defendant's license revocation did not take place until April 13, 2018. The sentence has been stayed pending appeal[.]. This case must be remanded to the district court for entry of a final judgment.

undisputed that the mistake was brought to the attention of the court without prompting by the court.

At issue is the ICA's finding that counsel did not have good cause for their failure to file an opening brief by the July 9, 2018 deadline set by the ICA—nor good cause for their failure to request an extension of the filing deadline. Two days after the deadline, counsel explained in their July 11, 2018 Amended Statement of Jurisdiction that the court lacked jurisdiction to consider the appeal. Specifically, counsel noted that the opening brief was not filed because “[w]e expected this court to issue an order dismissing this appeal and remanding to the district court for entry of judgment. Because of this, we did not file the opening brief as that would have been a meaningless act.”

While it may have been better practice to perform the technical task of requesting an extension of time to file the opening brief rather than inform the ICA two days after the deadline that it lacked jurisdiction to proceed with the appeal, there was nonetheless a sound basis upon which to conclude that such a request for an extension would be a hollow exercise requiring additional and unnecessary consideration by the ICA as to whether an extension of time should be granted. A request

for additional time to file an opening brief for an appeal that could not be considered by the court would lack merit.

Accordingly, the imposition of sanctions upon Mr. Partington and Mr. McPherson was an abuse of discretion.

In all other respects, I concur with the decision of the Majority.

/s/ Michael D. Wilson

