

**Electronically Filed
Intermediate Court of Appeals
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NO. CAAP-20-0000169

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

MATTHAN PATTIOAY, Petitioner-Appellant, v.
STATE OF HAWAII, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CASE NO. 1PC16100001676)

ORDER
DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION,
DISMISSING ALL PENDING MOTIONS AS MOOT,
AND
DIRECTING CIRCUIT COURT TO TREAT NOTICE OF APPEAL AS
NON-CONFORMING HRPP RULE 40(c)(2) PETITION FOR POST-CONVICTION
RELIEF AND OPEN A CIRCUIT COURT SPECIAL PROCEEDING
(By: Ginoza, Chief Judge, Leonard and Hiraoka, JJ.)

Upon review of this appeal filed by Defendant-Appellant Matthan Pattioay (Pattioay), self-represented, from circuit court criminal case number 1PC161001676, it appears that we lack appellate jurisdiction under Hawaii Revised Statutes (HRS) § 641-1(a) (2016) and Rule 40(h) of the Hawai'i Rules of Penal Procedure (HRPP), because there is no judgment in the record from which Pattioay can presently appeal.

On May 8, 2018, this court entered a Summary Disposition Order in CAAP-17-0000465 that affirmed a May 17, 2017 judgment of conviction against Pattioay for terroristic threatening in the first degree in violation of HRS § 707-716 (2014). On March 19, 2020, Pattioay filed identical copies of an HRPP Rule 40 petition for post-conviction relief as to the

May 17, 2017 judgment of conviction with both (1) the circuit court, in criminal case number 1PC161001676, and (2) the Appellate Clerk's Office, which created appellate court case number CAAP-20-0000169. In both cases, Pattioay's March 19, 2020 HRPP Rule 40 petition was uploaded into the electronic JEFS system as a "notice of appeal," rather than as an HRPP Rule 40 petition.

If the circuit court had entered a final judgment adjudicating Pattioay's March 19, 2020 HRPP Rule 40 petition, then, under "HRPP [Rule] 40(h), appeals from proceedings for post-conviction relief may be made from a judgment entered in the proceeding and must be taken in accordance with Rule 4(b) of the Hawai'i Rules of Appellate Procedure (HRAP)." Grattafiori v. State, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995) (internal quotation marks and brackets omitted). However, the circuit court has not entered any orders, much less a final judgment, on Pattioay's March 19, 2020 HRPP Rule 40 petition. Absent a final order or final judgment that is appealable under HRS § 641-1(a), we lack appellate jurisdiction, and this appeal must be dismissed.

Pattioay's March 19, 2020 "notice of appeal" appears to be, in substance, a non-conforming petition for post-conviction relief from the May 17, 2017 judgment of conviction pursuant to HRPP Rule 40(c)(2), which provides:

(2) Nonconforming Petition. Where a post-conviction petition deviates from the form annexed to these rules, it shall nevertheless be accepted for filing and shall be treated as a petition under this rule provided that the petition (i) claims illegality of a judgment or illegality of "custody" or "restraint" arising out of a judgment, (ii) is accompanied by the necessary filing fee or by a well-founded request to proceed without paying filing fees, and (iii) meets minimum standards of legibility and regularity.

When treating a nonconforming petition as a petition under this rule, the court shall promptly clarify by written order that the requirements of this rule apply and, if the information in the petition is incomplete, may require the petitioner to file a supplemental petition in the form annexed to these rules before requiring the state to respond.

(Emphasis added.) Under these circumstances, it is appropriate for the circuit court to adjudicate Pattioay's non-conforming HRPP Rule 40(c)(2) petition for post-conviction relief in a special proceeding.

IT IS HEREBY ORDERED as follows:

1. CAAP-20-0000169 is dismissed for lack of appellate jurisdiction.

2. All motions in CAAP-20-0000169 are dismissed as moot.¹

3. Pattioay's March 19, 2020 "notice of appeal" is deemed to be a non-conforming HRPP Rule 40(c)(2) petition for post-conviction relief from the May 17, 2017 judgment of conviction, and thus, the Circuit Court of the First Circuit shall open a separate special proceeding for the purpose of adjudicating Pattioay's March 19, 2020 non-conforming HRPP Rule 40(c)(2) petition.

4. Upon entry of this order, the Appellate Court Clerk shall transmit copies of this order and Pattioay's notice of appeal from CAAP-20-0000169 to the Circuit Court of the First Circuit.

DATED: Honolulu, Hawai'i, May 8, 2020.

/s/ Lisa M. Ginoza
Chief Judge

/s/ Katherine G. Leonard
Associate Judge

/s/ Keith K. Hiraoka
Associate Judge

¹ If necessary Pattioay may re-file a motion for leave to proceed in forma pauperis in the circuit court.