

NO. CAAP-20-0000389

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

ANTHONY LE, Petitioner-Appellant, v.  
STATE OF HAWAII, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CASE NO. 1PR191000004 (CR. NO. 1PC151001009))

ORDER  
DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION  
AND  
DISMISSING ALL PENDING MOTIONS AS MOOT  
(By: Ginoza, Chief Judge, Leonard and Wadsworth, JJ.)

Upon review of the record, it appears that we lack jurisdiction over the appeal that Petitioner-Appellant Anthony Le (Le), self-represented, has asserted from the December 24, 2019 order denying Le's petition for post-conviction relief pursuant to Rule 40 of the Hawai'i Rules of Penal Procedure (HRPP) (Order Denying Rule 40 Petition) in S.P.P. No. 1PR191000004, because the appeal is untimely under Rule 4(b) of the Hawai'i Rules of Appellate Procedure (HRAP).

"[P]ursuant to HRAP Rule 4(b), an appeal from an order denying post-conviction relief must either be filed within thirty days after the entry of the order denying the HRPP Rule 40 petition or, in the alternative, after the announcement but before the entry of the order." Grattafiori v. State, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995). Under similar circumstances, the Supreme Court of Hawai'i has held that, when a self-

represented prisoner attempts to assert an appeal, the "notice of appeal is deemed filed for purposes of [HRAP] Rule 4(a) on the day it is tendered to prison officials by a pro se prisoner." Setala v. J.C. Penney Company, 97 Hawai'i 484, 485, 40 P.3d 886, 887 (2002) (internal quotation marks omitted).

Here, HRAP Rule 4(b) provides the controlling time period for filing a notice of appeal, and the holding in Setala controls when the notice of appeal is deemed filed. Contrary to the thirty-day time limitation under HRAP Rule 4(b)(1), Le did not tender his notice of appeal, which bears a signature date of May 18, 2020, within thirty days after entry of the December 24, 2019 Order Denying Rule 40 Petition. Therefore, Le's appeal is not timely. Accordingly,

IT IS HEREBY ORDERED that appellate court case number CAAP-20-0000389 is dismissed for lack of appellate jurisdiction.

IT IS FURTHER HEREBY ORDERED that all pending motions in CAAP-20-0000389 are dismissed as moot.

DATED: Honolulu, Hawai'i, June 3, 2020.

/s/ Lisa M. Ginoza  
Chief Judge

/s/ Katherine G. Leonard  
Associate Judge

/s/ Clyde J. Wadsworth  
Associate Judge