

**Electronically Filed
Intermediate Court of Appeals
CAAP-19-0000877
04-DEC-2020
09:20 AM
Dkt. 34 ODSLJ**

NO. CAAP-19-0000877

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
CHARLES TUNG MING YUEN, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(CASE NO. 1DTA-18-03510)

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Ginoza, Chief Judge, Leonard and Wadsworth, JJ.)

Upon review of the record in CAAP-19-0000877, it appears this court lacks appellate jurisdiction because no final judgment was entered by the District Court.

Defendant-Appellant Charles Tung Ming Yuen (Appellant) appeals from the December 11, 2019 Notice of Entry of Judgment and/or Order and Plea/Judgment (Judgment).

On December 11, 2019, the Judgment was entered which found Appellant guilty of Operating a Vehicle Under the Influence of an Intoxicant, in violation of Hawaii Revised Statutes (HRS) § 291E-61 (Supp. 2018). However, there are notations on the document stating "Referred to: restitution + ability to pay studies" and "HEARING on rest 2/11/20." The December 11, 2019 Court Minutes also state "(Hrg on Restitution 2/11/20 10D-AM)." Thus, the issue of restitution was not adjudicated. "Appeals upon the record shall be allowed from all final decisions and

final judgments of district courts in all criminal matters." HRS § 641-12 (2016).

Judgments of conviction entered in the district courts may not be appealed unless they are final. Judgments of conviction are not final unless they include the final adjudication and the final sentence. In the instant case, the sentence imposed was not the final sentence because the district court expressly left open the possibility that its sentence of [Appellant] might include an order requiring [Appellant] to pay restitution. The court did not finally decide whether it would order [Appellant] to pay restitution and, if so, in what amount. Consequently, the [] Judgment is not final and, because it is not final, it is not appealable.

State v. Kilborn, 109 Hawai'i 435, 442, 127 P.3d 95, 102 (App. 2005).

Therefore, IT IS HEREBY ORDERED that the appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, December 4, 2020.

/s/ Lisa M. Ginoza
Chief Judge

/s/ Katherine G. Leonard
Associate Judge

/s/ Clyde J. Wadsworth
Associate Judge