

**Electronically Filed
Intermediate Court of Appeals
CAAP-21-0000341
12-AUG-2021
10:12 AM
Dkt. 17 ODSLJ**

NO. CAAP-21-0000341

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
ROBERTA WILBORN, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 1CPC-19-0000658)

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Hiraoka, Presiding Judge, Wadsworth and Nakasone, JJ.)

Upon review of the record in CAAP-21-0000341, it appears this court lacks appellate jurisdiction over the appeal because there was no timely appeal from a final appealable order or judgment in the underlying case, 1CPC-19-0000658. On May 21, 2021, self-represented Defendant-Appellant Roberta Wilborn (Appellant) filed a Notice of Appeal from 1CPC-19-0000658. On July 14, 2021, Appellant filed a "Notice of Appeal Fraud Upon Court" which stated, inter alia, "I Roberta Malori move forward to appeal of a 'mental assessment' hearing order by First Circuit Court of Honolulu" which we construe as an amended notice of appeal.

On October 25, 2019, the circuit court issued an interlocutory "Order Granting Motion for Mental Examination to Determine Defendant's Fitness to Proceed and Penal Responsibility" which ordered Appellant to undergo an evaluation to determine fitness to proceed and penal responsibility pursuant to Hawaii Revised Statutes (HRS) Chapter 704. The order was not certified for an interlocutory appeal.

On September 17, 2020, the circuit court issued an interlocutory "Order Denying Without Hearing "Motion to Quash Mental Examination to Determine Defendant's Fitness to Proceed and Penal Responsibility" Filed September 16, 2020." The order was not certified for an interlocutory appeal.

"It is well-settled that the right to appeal is purely statutory and exists only when given by some constitutional or statutory provision." Burke v. Cty. of Maui, 95 Hawai'i 288, 289, 22 P.3d 84, 85 (2001).

There is no statutory right to appeal under HRS Chapter 704 when a defendant is ordered to undergo an evaluation to determine fitness to proceed or penal responsibility. There is no appealable order or final judgment in the record on appeal. Therefore, this court lacks appellate jurisdiction.

IT IS HEREBY ORDERED that the appeal is dismissed for lack of appellate jurisdiction. All pending motions are dismissed as moot.

DATED: Honolulu, Hawai'i, August 12, 2021.

/s/ Keith K. Hiraoka
Presiding Judge

/s/ Clyde J. Wadsworth
Associate Judge

/s/ Karen T. Nakasone
Associate Judge