NO. CAAP-21-0000479

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

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

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

ORDER GRANTING MOTION TO DISMISS APPEAL
FOR LACK OF APPELLATE JURISDICTION
(By: Leonard, Presiding Judge, Hiraoka and Nakasone, JJ.)

Upon consideration of the Motion to Dismiss for Lack of Appellate Jurisdiction (**Motion**), filed by Plaintiff-Appellee State of Hawaiʻi on October 15, 2021, the papers in support, and the record, it appears we lack jurisdiction over Defendant-Appellant Roberta Wilborn's (**Wilborn**) appeal from Case No. 1CPC-19-0000658 because the Circuit Court of the First Circuit Court (**Circuit Court**) has not entered a final, appealable order or judgment and the appeal is premature.

Wilborn appears to appeal from the Circuit Court's September 22, 2021 Order Granting Motion for Mental Examination to Determine [Wilborn]'s Fitness to Proceed and Penal Responsibility. The Circuit Court did not certify the order for 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 Hawaiʻi 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.

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

IT IS HEREBY FURTHER ORDERED that all pending motions are dismissed as moot.

DATED: Honolulu, Hawaiʻi, October 22, 2021.

/s/ Katherine G. Leonard
Presiding Judge

/s/ Keith K. Hiraoka
Associate Judge

/s/ Karen T. Nakasone
Associate Judge